Message

From: D'Andrea, Anthony [dandrea.anthony@epa.gov]
Sent: 4/12/2019 8:55:31 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily Clips, 4/12/2019

Daily Clips
April 12, 2019

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Administrator

Reuters
Text: Transcript of Reuters interview with EPA Administrator Andrew Wheeler
https://www.reuters.com/article/us-usa-epa-text/text-transcript-of-reuters-interview-with-epa-administrator-andrew-wheeler-idUSKCN1RO02H
Thursday, April 11, 2019

U.S. Environmental Protection Agency Administrator Andrew Wheeler gave Reuters a wide-ranging interview on Thursday at his office in Washington, discussing issues from climate science to automobile emissions and biofuels policies.

FILE PHOTO - U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler arrives to testify before a House Energy and Commerce Environment and Climate Change Subcommittee hearing on the FY2020 EPA Budget on Capitol Hill in Washington, U.S., April 9, 2019. REUTERS/Yuri Gripas
The following is an edited transcript of the interview:

REUTERS: President Donald Trump gave you some work yesterday with executive orders to push states to speed energy projects. How do you plan to alter the state certification guidelines and how soon will you accomplish the task?

WHEELER: We've already started work, it may surprise you but we knew about the announcement before yesterday. We started working on it in advance, so we hope to have something out soon. I don't know when we will go final on it though. I'm not sure of the timing on that. We can probably follow up. It's to provide more clarity around the program and provide some direction on what states should be looking at when they are doing their 401 certifications. It's a program that hasn't been updated in decades. I don't think when it was originally drafted people were really anticipating the need for these export terminals and some of these other national projects. I don't think people really anticipated that some states would kind of go beyond what was intended for their review.

I'm not going to pick on anyone in particular, but Washington state, I don't think they made their determination based on the impact of water in their state, they are trying to make international environmental policy. I don't think section 401 was originally intended for states to make international environmental policy, I'm not just talking about U.S. policy. They're trying to dictate to the world how much coal is used, and I think, outside the original intent of 401. So we're going to put some more parameters around how 401 is used. We will follow the law though. The states will still have a lot of flexibility of course. Part of it is also on timeliness, the states should be issuing their decisions. Some of these decisions have taken years for the states.

REUTERS: Critics say there is no way EPA can take the veto of the states out. That has to be an act of Congress.

WHEELER: I'm not suggesting we're taking the states' veto out. What we want to do is provide more clarity around the program and provide the parameters on what states should review and how long that should take.

REUTERS: What are some of the most important energy projects for you to push forward?

WHEELER: Well, hopefully it would provide more direction to the states on looking at export terminals, LNG terminals, also some of the pipelines as well. I think it's more than a shame. I don't know how far I want to go, but it's pretty awful that we are importing natural gas to New England instead of transporting it via pipeline, natural gas, into New England. We are producing it in large quantities in the Marcellus Shale. Instead of using that natural gas, which is produced in the most environmentally conscious manner anywhere in the world, we are importing Russian natural gas which is not produced in an environmentally conscious manner. If the states that are blocking the pipelines were truly concerned about the environment they would look to where the natural gas would be coming from, and they are forcing the New England states to use Russian-produced natural gas which is not as clean as U.S. natural gas. I think it's very short-sighted.

REUTERS: What is the timing on EPA work on the executive orders?

WHEELER: I just don't off the top of my head, I don't remember the timing.

REUTERS: Maybe six months?

WHEELER: Again, I don't want to put a date on the timing. Hopefully we will have our proposal out soon and go final shortly thereafter.

Can we get back to you on the timing? I just had three budget hearings and I have a lot of facts and numbers in my head and this is a new one, and off the top of my head I do not remember how long that Dave Ross (the assistant administrator for the Office of Water) told me it was going to take.

REUTERS: How do you respond to criticism that the Trump administration is setting policies that take aim at blue states or other states that focused on addressing climate change, or using permits to block projects they think are environmentally harmful?

WHEELER: We are the United States Environmental Protection Agency so we are trying to apply policies even-handedly across all 50 states. What the president announced yesterday was an updated process for all 50 states. On the CAFE side we can't have a patchwork of automobile standards for some states and different standards for other states. This goes to WOTUS as well. We've had quite a few requests to extend the WOTUS comment period. And we're not doing that for the primary reason that right now we have 22 states following one set of WOTUS regulations and 28 states following another. I really want to move as quickly as we can to finalize WOTUS so we have the same regulations applying to all 50 states.

Back on the CAFE. ... We are looking at this issue. California just looked at it in terms of energy efficiency. Having a separate standard for California, you are talking about a rounding error talking as far as the impact on CO2 worldwide. We are looking at more than energy efficiency. We are also looking at highway fatalities. There is other public policy interest that we have as a nation, that is I believe our responsibility. We are working with DOT jointly. Last week at the Washington Auto Show I said I hope California doesn't sue us. Our final regulation is not going to be the same as our proposal. I can't go into more detail because we are still reviewing the data and information, but we took comment and the final will not be the same. We have taken constructive comments, criticisms and concerns from a whole host of different interest groups, and I hope that our final regulation is something that everyone can get behind and support. It was 24 hours after I said I hope California doesn't feel the need to sue us that they went ahead and sued us. In my mind this is so much more about politics in the state of California than it is protecting the environment.

REUTERS: The preferred option as you know, on CAFE, is a flatline. ... Is it safe to say that it is going to go up by some amount over a flatline? Is that how we should read your comments?

WHEELER: I really can't say at this point what it's going to look like.

REUTERS: There was a report out yesterday that you guys decided on a 1 percent per year increase. Is that accurate?

WHEELER: It's different when you have anonymous sources making comments, but when the administrator of the EPA says what we're going to do or not going to do it's premature, and I really can't say anything on the record yet about what exactly we're going to do. But we've taken comments from a lot of different interest groups into account and we're trying to come up with a final regulation that addresses a majority of concerns.

REUTERS: Do you think there was ever going to be a deal with California, given how far apart everyone was? The autos said, "Just, hey, pick a number anywhere in the middle as long as we have certainty about the program going forward." It looks like we are headed for sort of years of litigation.

WHEELER: And I hope not and I really did hope that we could reach an agreement. You know it is interesting when the auto companies came in after our proposal came out, they told me that some of the out years — our numbers are actually more stringent than the Obama numbers because Obama had more exemptions and offramps and flexibilities put in — so that some of the offyears they told us that our numbers are more stringent. So that tells me that at the end of the day our proposals weren't that far apart, but they, I think, use it more for social engineering and for politics and we're looking at it more on the technical side as far as what is feasible, what can be accomplished. One thing Obama administration did not do in their mid-term evaluation was take into account real time data as far as what Americans was purchasing. The length of age of cars on the road. I think they were still looking at 2000 data saying that average age of an automobile is 8 years old, when it's actually now 12. It makes a big difference. By lowering the price of a car, we're hopefully going to get some of the older cars off the road. Getting the older cars off the road improves public safety as well as environment. The midterm evaluation by the Obama administration was a rush job. It was absolutely a rush job. They started it November 2016 after the election, they did a 15-day notice in comment and they finalized it before Jan. 20th. You just can't review all the data and inputs in that sort of time and they didn't. They didn't look at the most recent data and information.

REUTERS: Do you think that the Obama administration was trying to disfavor fossil fuels and favor EVs?

WHEELER: Oh absolutely. The only way you could comply ultimately with Obama numbers is to have 30 percent electric vehicles and that's not what American consumers are buying. Right now we're...2 percent electric vehicles. I don't think this country is going to turn the fleet over to get to 30 percent electric vehicles by 2025. I just don't think that's possible. The automobile companies are paying a record number of fees for non-compliance. In 2016 - is the last year of data we have - I believe it was $100 million that they paid in 2015 or 2016 for non-compliance with the standards and it's projected to get up to $1 billion...if the Obama regs were left in place. By the end of Obama CAFE standards. It was projected close to $1 billion that they're paying each year for inability to comply with Obama standards. We're trying to have realistic standards. ... There's certainly a marketplace for automobile manufacturers to go above and beyond CAFE standards. ... There is a market for people that went above and beyond. We don't think, number one, we're not using this for social engineering, we think we should have realistic regulations that companies can comply with. There's only three companies this year that are able to comply with Obama regulations. We're still keeping the regulations in place, we still have two years of complying but companies are not able to comply.

REUTERS: Some of the critics say, 'Hey you're doing this for the oil industry,'...Because oil consumption will go up.

WHEELER: I have not met with a single oil company over CAFE standards since I've been in this job. The first person who told me that I was trying to do this for the oil companies was Senator Markey. When I met with him, it actually kind of threw me. There is on that I don't remember as company, was a trade association. What they've lobbied with me over the last year was RFS. And there was one meeting when one of them was in the room, as they were leaving they said, "I don't want this to be a totally negative meeting, we like what you're doing on CAFE." We're not doing it for the oil industry, that's the extent of conversations I've had with the oil industry on our CAFE proposals. It wasn't immediate in my mind why they like it but this is nothing to do with the oil industry. We're not doing it for the oil industry, I'm not doing it for the oil industry.

REUTERS: That meeting about RFS did go badly, and that CAFE ended up being the only positive thing, as you just said it.

WHEELER: That was like last summer. The RFS program... I was hoping that I could get everybody to like what we're doing. At this point I am just hoping everybody dislikes me equally. We're moving forward with the E15 and RIN market reforms in our proposal. We hope to have those finalized by May 30th, in time for the summer driving season. Seriously, there are things in that that are for both sides to be very happy about. The RIN price mechanisms should help bring down and keep the price of RINs lower and stable, which the oil industry likes. And the E15 is something that the ethanol industry likes. So hopefully we are helping both sides and moving forward with some policy that everyone can get behind and like.

REUTERS: So there are no plans to separate them (E15 and RIN market reform)?

WHEELER: No, they'll come out at the same time.

REUTERS: What's your contingency plan in case it gets sued and a court would issue a injunction that would stop the implementation of E15?

WHEELER: I don't look for that to happen, I think we're on very solid legal ground with E15. I do try to anticipate court action but we can't regulate based on what we might fear from courts. I think legally we're on solid ground with E15.

REUTERS: USDA has suggested that there could be a discretionary enforcement. Once Secretary Perdue mentioned it as well. Is that still a contingency plan?

WHEELER: We will have it ready in time for summer driving season. We won't have to do anything like that.

REUTERS: On the small refinery waivers, which is the big issue, we've heard people like Senator Grassley and Senator Ernst almost openly saying that they expect EPA under your leadership to change tack from how your predecessor was issuing the SREs. What is your response to that?

WHEELER: We have already changed tack in the sense that we're being much more transparent. We've created the dashboard last fall where we're putting our information out in real-time on the small refinery waivers program and we're being more upfront about what we're doing and why we're doing it. So we have changed tack. But the small refinery exemption program is authorized under the law. EPA was not implementing it, and we were sued three times and we lost three times. And we received appropriations language directing us to implement the small refinery exemptions program and we are. We will continue to, we will continue to follow the law. Under the way the process works is that they apply to Department of Energy first, and DOE reviews the information and determines whether or not there's a hardship, an economic hardship for the refineries. And they submit their recommendations to us, we review the information, we look at it, we compare it with the data that we have and we go forward with a yes or no with the small refinery waiver.

REUTERS: Should the market expect fewer? There is the (possibility of) full waivers, partial waivers and simply fewer waivers.

WHEELER: You don't get a small refinery exemption for the life of your refinery. It is based on economic data from year-to-year. Just looking at it from where I sit, and I have not reviewed the information from DOE yet, but the RIN prices have been relatively low and relatively calm since last spring so that would tell me that there should be less economic harm in the refining industry right now than there was a year ago. There's more than just the price of RINs for economic harm, but just by that factor alone, I'd think maybe there would be fewer refinery exemptions because of that. Because we certainly do take a look at real-time data on the economic harm imposed on the small refineries. So that's certainly one and that's only one of the economic indicators, but it's an important one. Last spring the RIN prices got up over a dollar and they remained under 20 cents since then. Most of the time they've been around 10-12 cents a credit. I'm not an economist but I would think that would factor into whether or not there's an economic harm for a refinery.

REUTERS: Has this process been slowed because of the political considerations? The market was expecting 2018 decisions before March 30.

WHEELER: We still have not received the DOE recommendations yet. I'm told we might start receiving by the end of this week but we haven't received them yet. We have not held up anything. We had a couple that were left over from 2017. We processed most of 2017. But we had a couple that came in late, one that required a little more analysis, but we haven't physically received. We got a list from the Department of Energy a couple weeks ago of the 2018 universe but they haven't actually forwarded their recommendations to us yet.

REUTERS: So if the DOE input arrives by the end of the week then what are we looking at timing-wise?

WHEELER: Our technical guys then take a look what DOE sends us. If they send us 30 of them in one day, it may take us a while to process all of them. If we get one or two...it would be a little bit easier to process them if they're scattered, but I don't know how DOE plans on sending them over. So I can't hazard to guess on how long it's going to take us until we see what the universe is and the amount of data we have from the DOE.

REUTERS: Co2 emissions have gone up by the largest amount in eight years. According to some studies, Co2 emissions would go up under your proposed ACE (Affordable Clean Energy Rule). This would suggest stronger regulation is needed. What do you define as strong regulation?

WHEELER: Strong regulation is legal regulation. The CPP (Clean Power Plan)... I get accused of rolling back the CPP by environmentalists and Democrats on the Hill. My simple answer to that is you can't roll back a regulation that never went into effect. The CPP was stayed by the Supreme Court. It is rare for the SCOTUS to stay a regulation in the environmental legal arena. I think that is very noteworthy. There was a lot of criticism at the time that it went beyond the Clean Air Act. You go back to the MATS decision. After EPA lost the MATS decision the administrator at the time said it didn't really matter since everyone has already complied with it anyway. When I read the MATS decision at the time I think I said in a blog post somewhere I thought Justice Scalia...he was writing toward the case he hadn't received yet, the Clean Power Plan. ... I was not completely surprised by the SCOTUS stay of the CPP. I think what is effective regulation is one that follows the law and will be held up in courts. So we took a hard look at where we believe the Obama administration was wrong on CPP and what was outside the bounds of the CAA and the fact they went outside the fenceline. I think that was one of the main sticking points and the rationale for the stay. What we did was to put forward a proposal that follows the authority Congress has given us. I believe the ACE regulation is going to stand up in court. It is going to give real reduction. We are projecting a reduction of 34 percent in the electric power sector over the life of the regulation. I think that is the responsible thing for the agency to do. I don't think it's responsible with our form of government with three branches, I don't think it's EPA's job to write the legislation on its own. We have to follow the statutory constraints Congress has given us, and I think we are doing that under the ACE proposal. I believe we are on a course of getting meaningful Co2 reduction. I think that's the responsible thing for a regulatory agency to do.

REUTERS: EPA scientists recently published a report looking at the impacts of climate change across 22 sectors and said early adaption could reduce its worst impacts. Some of your scientists internally continue to believe more stringent action is needed to address climate change. You have said in a hearing that climate change is not the greatest problem facing us right now. Do you trust your internal scientists?

WHEELER: I trust my internal scientists. I trust my career scientists. That study is not an EPA study. We encourage our scientists, we have some of the leading scientists in the world working on a number of environmental issues. We encourage our scientists to publish. But just because our scientists publish something in a journal doesn't mean that that's agency policy or all the other scientists at the agency agree with that particular study. There is a process for statement from the agency. There is a process where we go through intra-agency review where we have a review by all the offices. Then governmental review. Those studies were not EPA studies. We all encourage our scientists to conduct research, but I don't think you should confuse a study published by one of our scientists as official EPA policy. I have not read that article, I just saw a news a clip about it, but I haven't read it and I haven't talked to the scientist that wrote it. But I have had several briefings from our career scientists on climate change and asked questions about climate change and that informs the decisions that I make. I can't just look at the science in a vacuum. We are not a science academy making proclamations about science. We are a regulatory agency. We have to take the science we have developed and apply it to our regulatory constraints that we have and regulatory authorities that we have and move forward. I said before I took this job that I believe in climate change and man has an impact on climate change. But I believe the number one issue facing our planet today is water. I've been saying that for a number of years. I said that at a climate conference at MIT back in the early 2000s. It wasn't well received then and it's not always well received now. But it's the truth. When you have a thousand children that die a day from lack of drinking water, that's a crisis and that's a crisis that we - we collectively as the world - know how to solve that problem. We know what it takes but we haven't had the will internationally to solve that problem. And we do a number of pilots around the world and a number of other organizations both public and private and international do pilot programs and they work with the community on drinking water here and there. What we need to do is take those pilots to the next generation. We have a good story to tell in the United States. Our water is not perfect but 92 percent of our water systems meet the EPA standards every

day. We are working on a lot of innovative ways to provide safer drinking water to the American public. Innovative financing ways. In addition to the SRF we have the WIFIA (Water Infrastructure Finance and Innovation Act) program. It's the second year of that. We've only issued eight grants under WIFIA loan program. We just announced the next round of grants. We just published it last Friday and communities have until July 5 to give us a letter of intent for the next round for WIFIA loans. If you could work that in, that would be great so the public knows it's out there.

REUTERS: Jumping onto PFAS, the kind of process how EPA addresses PFAS and PFOA, ... why didn't EPA set the maximum contaminant level?

WHEELER: This is a process under the law of setting the MCL and we started the process. I've actually been surprised by the heat we have taken regarding the PFAS and PFOA management plan. That was a career staff document and remains the most comprehensive action plan this agency has ever developed for an emerging chemical concern. We had people from all of our program offices working on that. What I tasked everyone with was to go back and be creative and look at the authorities we have and figure out how many different ways we can address this issue and what we can do with the American public to make sure we are addressing PFAS and PFOA. And they came back with some really creative ideas. And we are moving forward. And we're moving forward not only on the MCL side but on other - on TRI, the Superfund program, the CERCLA program. We are addressing it through all of our staff. And at the time, we are conducting more research. Since the report came out we've had this incident in New Mexico with cows and we're now working with the USDA, trying to do some cutting edge research there. I've visited three of our labs that do PFAS and PFOA research. I was just in our Cincinnati lab and they do PFAS and PFOA research there. There is a misconception out there that we know what the problem is and we know how to fix it. There are thousands of PFAS and PFOA chemicals out there - there's long chain and short chain. We are still trying to figure out which ones are the most harmful to the public. I was under the misconception that the same treatment will work for any of the PFAS PFOA substances but it doesn't. Some of the treatment technologies work for some and they don't work for others. We have a lot of research to do. We are doing more research on identifying up front through our chemicals program as far as taking a look at significant new uses before anybody could start putting into commerce new PFAS and PFOA compounds, whether or not they pose a problem to environmental or public health. We're looking at how to detect when they are in the water easier and when to test for them. It's not the same test for all of the compounds either. At the same time we haven't slowed down on enforcing. We have taken eight enforcement actions and in addition we provided technical assistance to a couple of dozen other enforcement actions by states and local governments around the country. So some of the communities and members of Congress have complained that our state is having to clean this up without EPA assistance. Actually no, we are providing the technical assistance so they know how to clean it up, we are providing the technical assistance so they know how to detect it. We are also doing some really innovative imaging - GIS - to figure out where the problems might be before they are detected. We know where the chemicals were produced. We know where they were manufactured. We also know to some certainty where they were used the most ... airports and firefighting ... so we are able to use our GIS mapping to overlay that with the water systems and aquifers to go out to the communities and test before people there realize it. We are using some innovative GIS technology to try and anticipate where the next problem may occur. We are really at the forefront of this. I just applaud our career staff, many of them...pulled all-nighters to get everything together.

REUTERS: A lot of young people look at what your EPA is doing on emissions... and they look at your comments that climate is not the most important environmental problem...

WHEELER: But it's important and we are addressing it.

REUTERS: But they point out water issues are part of the climate change problem, especially with drought.

WHEELER: Oh sure, and I've said that, that climate impacts water. But the problems we are having with water have been around long before climate was an issue. We've had problems on water infrastructure, on waste in the oceans, and in drinking water for a hundred years.

REUTERS: Do you worry that concern about a lack of leadership on climate change will spur a movement that will get Democrats elected next year?

WHEELER: I can't look at the politics of this, that's just not my job. I can't look at the politics and how this is going to impact elections. I have to address the environmental issues and problems as I see them and as they are presented to me by the people here at the agency. Yes, climate is an issue and we are working to address it, but I think water is a bigger issue and I talk about both and continue to. But there hasn't been enough talk about water. The previous administration focused all their energies on one issue and that was climate change. You take a look at the website that we are accused of taking all the climate change information off the website. We didn't. It's on there, it's archived, but it's on there. But that's not the only environmental issue the world faces. I do fear that because so many people only talked about climate change, you're right, there could very well be a new generation coming up saying that's the only environmental issue. And it's not. I am going to have to be very careful in how I say this, because I don't want to be misrepresented here. If I could go off on plastic straws for a second. Yes, it's important to get all plastic out of the waste stream. Are plastic straws the be-all and end-all of this? No. By definition of the size of the straw and the amount of waste the straw makes up. My biggest concern is that in switching away from plastic straws that people are going to think that that problem is solved because they are no longer using a plastic straw. And that doesn't solve the problem. We have the same issue on recycling. We have a huge recycling crisis right now, there are not enough products for recycled material to go into. We are just stockpiling recycled materials in warehouses. When I say "we" it's not the EPA. Recycled products are being stockpiled in warehouses and loading docks around the country because China quit accepting the materials a few years ago. But most Americans think if I put my stuff in the recycling bin at the street corner the problem is solved. That doesn't solve the problem. We hosted a recycling summit last fall, the first time the agency ever did that. We brought in the people from the entire value chain, from the manufacturers of the raw virgin materials through the manufacturers of the goods, to the packagers, to the people who collect the recycle materials, to the end users who take the materials and turn it into new products, and we gave them four charges to work on, and we've had continuing meetings with the groups since then and we are going to have another summit this fall. I have a real concern and this is part media, part politician, people talk about this issue du jour and that's all people focus on and they don't realize that that's not solving all the problems that are out there.

REUTERS: For your policies to be effective, you would need Trump to win.

WHEELER: He's going to. I'm looking at a five-and-a-half-year planning horizon at this point. I'm going to have five-and-a-half years to complete everything we are trying to do. And it's why I continue to talk about water and the importance about doing something for water.

REUTERS: You guys told the autos on a call that you were targeting May or June to finalize rule. Is that still the case?

WHEELER: What I said in the auto show last week was I'm targeting late spring, early summer. And I do that because seasons last lot longer than people realize. We hope to get it as quickly as possible. We're working with DOT. It's a complex rule-making. We hope to get it out as quickly as possible.

REUTERS: On diesel, you've gotten aggressive on enforcing the diesel cases. Do you think that the auto community got the message that you're going to catch cheating?

WHEELER: I hope so. Because we are. If there is cheating we are going to catch it. It's not just the automobile manufacturers, it's the after-market defeat devices. We've taken a lot of enforcement action to get defeat devices off the roads. It's not just setting standards, you have to enforce the laws, too. And we're doing much more enforcement than we're given credit for.

REUTERS: How are you going to accommodate the oil states and corn states under the RFS (Renewable Fuel Standard)?

WHEELER: RFS is a very important program. I worked on the legislation in 2004 and 2007. I was the staff director for both of those energy bills on the environment committee. This was an issue that went on to the environment committee. It was not in the jurisdiction of the energy committee, it's the jurisdiction of environment committee. But it's a very important program. The way it was set up, we're going to have rule-makings every year. We have to do the RVO (Renewable Volume Obligation) every year. We've done another thing on certainty, which the oil industry was very

happy that we did, was to get the RVO out on time the last two years. It's the first time that's ever happened. Providing more certainty, more transparency helps the program and we're hoping to do that. We're being very transparent on what we're doing on the E15 and the RIN price mechanisms. So I think the fact that the RIN prices have been low for almost a year shows that program is working and there's transparency and the market is stabilized. It's when you have uncertainty, regulatory uncertainty, congressional uncertainty that can ripple through the RIN price markets.

The program does expire and people are going to have to start talking about and thinking about what the next generation of RFS looks like. But we're not there yet. Again, I'm focused on transparency, I'm focused on certainty, and I think that's what we're doing by announcing we're going to have the E15 on time for driving season, by announcing that we're going to do the RVOs on time, by putting the information out on our dashboard on small refinery exemptions. The more upfront and open we can be I think the better the program is...I think we can have a program where both sides can look at and say this is what the Congress wanted, this is what they intended and EPA is doing that upfront and above board and that's my goal.

Air

Bloomberg Environment
New York Sues EPA Over Interstate Ozone Pollution (1)
https://news.bloombergenvironment.com/environment-and-energy/new-york-sues-epa-over-interstate-ozone-pollution
Brian Flood
Friday, April 12, 2019

- COURT: S.D.N.Y.
- TRACK DOCKET: No. 1:19-cv-03287 (Bloomberg Law Subscription)

New York state is suing the U.S. Environmental Protection Agency over its alleged failure to act on interstate ozone pollution.

New York submitted a Clean Air Act petition to the EPA in March 2018. It asked the agency to force states upwind from New York to impose suitable emission limits within three years on their large stationary sources of ozone. But the agency has failed to hold a public hearing as required by the CAA or take action in response to New York's petition, the state claimed.

Upwind states like Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia significantly contributed to New York's failure to meet national ambient air quality standards for ozone, the state said.

These sources should be operating with modern nitrogen oxide emission controls, the state said. Nitrogen oxide is a precursor that reacts in the presence of sunlight to form ozone.

Ozone can aggravate a host of medical conditions, including asthma, bronchitis, heart disease, and emphysema, and has been linked to early death, New York said.

On the worst ozone days, the upwind sources "significantly contribute to unhealthy air for more than 16 million New Yorkers," the state claimed.

Cause of Action: Clean Air Act.
Relief: New York asks the court to order the EPA to hold a public hearing on its petition, and make a final decision on the petition.
Response: An EPA spokesman said the agency doesn't comment on pending litigation.

The case is New York v. Wheeler, S.D.N.Y., No. 1:19-cv-03287, filed 4/12/19.

E&E News
Emissions fell a half-percent in 2017 — EPA
https://www.eenews.net/greenwire/2019/04/12/stories/1060155831
Nick Sobczyk
Friday, April 12, 2019

U.S. greenhouse gas emissions fell by a half-percent during President Trump's first year in office, according to EPA's final analysis for 2017.

That included a 4.25% drop in the power sector, coinciding with a 1.2% increase in transportation-related emissions, now the country's top source of planet-warming emissions.

Those drops are due in part to falling fossil fuel combustion, largely the result of declining coal generation and increased use of natural gas and renewables, as well as relatively mild weather that led to decreased electricity use, EPA found.

The report, released yesterday, is the final version of EPA's "Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2017."

The overall reduction is marginally different from a draft version of the document, which is mandated under the United Nations Framework Convention on Climate Change, that the agency published in the Federal Register in February (Greenwire, Feb. 12).

EPA sold the overall reductions as a win for industry innovation, pointing to numbers that show a 13% drop in greenhouse gas emissions from 2005 to 2017.

In the power sector, previously the nation's top emitter, emissions have fallen nearly 28% in the same period, according to EPA's analysis.

Methane emissions were up slightly in 2017, but they have fallen by 15.8% since 1990, which EPA attributed in part to decreasing waste from natural gas transmission and storage.

Transportation emissions, however, continue to rise, and 2017 emissions overall were still up 1.3% compared with 1990.

Emissions of hydrofluorocarbons, or HFCs, were up 2.1% in 2017 compared with the previous year.

Courts have scrapped Obama-era efforts to phase out the potent greenhouse gases, used for cooling and refrigeration, part of the previous administration's attempt to comply with a global agreement on HFCs known as the Kigali Amendment.

The Trump administration has not submitted the agreement for Senate approval and looks unlikely to do so, despite support from manufacturers and more than a dozen GOP senators.

InsideEPA
EPA's final GHG inventory confirms slight emissions cut
https://insideepa.com/daily-feed/epas-final-ghg-inventory-confirms-slight-emissions-cut
Thursday, April 11, 2019

EPA's final annual greenhouse gas inventory that includes data through 2017 is confirming a relatively small GHG emissions cut from the prior year, highlighting a slowdown in reductions during the early part of the Trump presidency.

The final inventory, released April 11, says that national GHG emissions were 6,457 million metric tons (MMT) of carbon dioxide equivalent, which is a 35 MMT reduction from 2016, or 0.5 percent lower.

The rate of decline, however, is slowing relative to 2015 and 2015, when total emissions dropped 2 percent each year.

When EPA released its final inventory covering 2016 emissions, then-Administrator Scott Pruitt said the decline shows that the country can reduce emissions using technological innovation.

Despite the slowed GHG improvement, current EPA chief Andrew Wheeler has a similar message. "Through industry innovation, we've seen substantial reductions in greenhouse gas emissions over the last decade," he said in an April 11 press statement. "This is proof that American ingenuity can support continued emissions reductions in the years ahead without the need for regulatory overreach."

Many observers credit the GHG cuts in the last decade to a mix of factors, including the natural gas shale boom, federal tax policy that encouraged deployment of renewable power, and state low-carbon electricity mandates.

Democratic lawmakers, however, have been increasingly critical of Republicans' reliance only on innovation to reduce GHGs, arguing that more affirmative policy is needed to reduce a sufficient amount of emissions to stave off the worst impacts of climate change.

EPA's final inventory shows a marginal improvement from the draft version, which found a 0.3 percent emissions decline in 2017, or 21.1 MMT.

According to the final figures, transportation-related emissions increased from 1,779 MMT in 2016 to 1,800.6 in 2017, a 21.6 MMT boost. This partially offset continued GHG declines in the power sector, which went from 1,808.9 MMT in 2016 to 1,732 MMT the following year, a 76.9 MMT cut.

Politico Pro
New York sues EPA for answer to upwind pollution petition
https://subscriber.politicopro.com/article/2019/04/new-york-sues-epa-for-answer-to-unwind-pollution-petition-3079415
Alex Guillen
Friday, April 12, 2019

New York sued EPA today for not answering the state's petition seeking upwind ozone-related pollution controls on sources in nine states.

The March 2018 petition from New York under Section 126 of the Clean Air Act identified power plants, refineries and other emitting sources in nine states that it said "are significantly contributing to nonattainment or interfering with maintenance of" national ozone standards in New York. The Northeast region is known as "America's tailpipe" because pollution from several states flows through the area.

"New York needs EPA to fully address interstate transport from these sources to meet its 2008 and 2015 ozone NAAQS requirements under the Act," the state wrote in its lawsuit.

The nine states are Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia.

The law requires EPA to make an up-or-down decision within 60 days of such a petition. EPA extended its own deadline by six months, but still has not made a decision, the state complained.

Delaware and Maryland similarly sued the Trump EPA to obtain a response to their own separate Section 126 petitions. EPA ultimately rejected their petitions, leading to ongoing legal challenges from both states.

WRAL.com
Kentucky plan to reduce Mammoth Cave haze approved by EPA
https://www.wral.com/kentucky-plan-to-reduce-mammoth-cave-haze-approved-by-epa/18322778/

Friday, April 12, 2019

LOUISVILLE, KY. — The U.S. Environmental Protection Agency has approved Kentucky's plan to meet federal air pollutant and visibility requirements around Mammoth Cave National Park.

EPA administrator Andrew Wheeler visited Kentucky Friday to announce the approval of the state's regional haze plan. States develop plans in order to comply with a portion of the Clean Air Act that requires states to work toward reducing air pollution problems at national parks and wilderness areas.

The retirement of coal-fired power plants in recent years and the installation of pollution scrubbers at other coal plants in Kentucky has reduced haze-causing emissions.

Kentucky officials say emissions of sulfur dioxide and nitrogen oxide from Kentucky power plants are down 78% and 40% over the last 10 years.

Chemical

DTN
States Fight Back on Dicamba
https://www.dtnpf.com/agriculture/web/ag/crops/article/2019/04/12/state-regulators-ask-epa-allow-state
Emily Unglesbee
Friday, April 12, 2019

ROCKVILLE, Md. (DTN) -- The nation's state pesticide regulators are fighting back after EPA's recent announcement that it is considering limiting states' ability to place additional restrictions on federal pesticides.

Rose Kachadoorian, president of the Association of American Pesticide Control Officials (AAPCO) and an Oregon pesticide regulator, and Leo Reed, an Indiana pesticide regulator, penned a letter urging EPA to leave this state right untouched. Barbara Glenn, CEO of the National Association of State Departments of Agriculture (NASDA), also sent a letter to EPA, asking the agency to consult with state regulators before making any decision.

"AAPCO takes this issue very seriously, and strongly supports a state's right to grant a Section 24(c) pesticide registration to reduce risk," Kachadoorian and Reed wrote.

At issue is an announcement made by EPA in late March that the agency is "reevaluating" how it handles additional restrictions placed on federal pesticides via a section of pesticide law known as 24(c). This section of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) was crafted to allow states to expand or supplement the use of a federally labeled pesticide according to individual state needs. However, states have occasionally used it to restrict a pesticide's use instead. Most recently, a number of states have used 24(c) labels to add restrictions to the new dicamba formulations XtendiMax, Engenia and FeXapan, out of concern over widespread off-target dicamba movement and injury over the past two years.

For example, after fielding a combined 576 complaints about dicamba injury in 2017 and 2018, Illinois regulators opted to grant a 24(c) label for the three dicamba herbicides in 2019, which mandates a cutoff date of June 30, among other restrictions.

"We now have two years of data showing how dicamba has the potential to drift off target," John Sullivan, director of the Illinois Department of Agriculture, said in an announcement of Illinois's new 24(c) label. "It's obvious measures need to be put in place so farmers can continue to effectively use these products, while also protecting surrounding property and crops."

EPA appears to disagree, stating that: "Due to the fact that section 24(a) allows states to regulate the use of any federally registered pesticide, and the fact that some states have instead used 24(c) to implement cutoff dates (and/or

impose other restrictions), EPA is now re-evaluating its approach to reviewing 24(c) requests and the circumstances under which it will exercise its authority to disapprove those requests." See the DTN story on EPA's announcement here: https://www.dtnpf.com/...

Without this use of 24(c), states will be unable to move quickly to limit pesticide use to protect workers or their environment, Kachadoorian and Reed warned EPA in the AAPCO letter. Enacting state laws regarding an individual pesticide can take years, during which damage from a pesticide could continue unabated, she noted. In particular, the frequent revision of the new dicamba herbicide labels have made it hard for states to make permanent changes to their use.

"With [dicamba] labels changing annually and a short two-year registration period of the dicamba containing products, SLAs [state lead agencies] have not been able to consistently identify the mitigation measures needed beyond the [federal] label," the state regulators wrote. "Utilizing the Sec. 24(c) process allows SLAs to be nimble, timely, practical and appropriately responsive."

The EPA itself has benefited from states' use of 24(c) to limit dicamba use, the state regulators noted. In 2017 and 2018, several states issued specific restrictions on dicamba that have since been adopted by the EPA and added to the federal dicamba labels released in November 2018. For example, some states banned dicamba applications when winds surpassed 10 mph -- a restriction now codified on the federal dicamba labels.

The AAPCO letter also noted that ending state 24(c) label restrictions could actually threaten the availability of dicamba herbicides for farmers. "In order to maintain the technology to control herbicide resistant weeds, it has been necessary for states with unique or special local conditions to have the option to grant Sec. 24(c) registrations," the state regulators wrote. "These registrations allow for adequate weed control to occur, but also mitigate potential risks."

A change to state use of 24(c) would affect all pesticides -- not just dicamba, Kachadoorian and Reed added. "The EPA policy of not disapproving more restrictive Sec. 24(c) registrations has been in place for nearly 30 years," they pointed out. "The current process has allowed SLAs to continue the use of various pesticides, within their individual jurisdictions, with additional safeguards."

So far, EPA has not opened up a Federal Register docket on its pending 24(c) decision and invited public comment, as normally occurs with regulatory policy changes. States are free to enforce their 2019 24(c) labels on dicamba and other pesticides -- for now.

Glenn ended her letter from NASDA to EPA with a warning: "We hope EPA recognizes that states are not stakeholders but co-regulatory partners under FIFRA and, therefore, must be consulted on any FIFRA regulatory or policy initiative."

News4Jax
Jacksonville neighbors worried about exposure to toxic chemicals
https://www.news4jax.com/weather/environment/jacksonville-neighbors-worried-about-exposure-to-toxic-chemicals
Destiny McKeiver
Thursday, April 11, 2019

JACKSONVILLE, Fla. - Cleanup is underway at a Superfund site in Northwest Jacksonville, where neighbors fear the proper precautions aren't being taken to contain the spread of toxic materials.

For over 30 years, residents have endured pollution coming from the former Fairfax Street Wood Treaters plant, a 12-acre property located near two elementary schools, a day care center and a residential neighborhood.

The now-defunct wood treatment plant is considered one of the most contaminated sites in the country, according to the Environmental Protection Agency, which placed the facility on its National Priorities List in September 2012.

Over the years, neighbors have complained of health issues and difficulty breathing. Now, they're concerned that ongoing efforts to remove contaminated soil and debris may be kicking traces of dangerous chemicals into the air.

"I bought a house down the street years ago," neighbor Eddie Rogers told News4Jax. "I got cancer. Everything that causes it, I got."

Rogers is one of several residents who claim living near this site has made them sick. News4Jax interviewed former construction workers in 2015, who said they stacked lumber coated with toxic chemicals. They too had major health issues.

From 1980 to 2010, workers at the facility treated utility poles and lumber products using chromated copper arsenate, or CCA, a wood preservative, and then let them drip-dry. According to the EPA, that chemical seeped into the ground.

When the owners, Wood Treaters LLC, filed for bankruptcy and later shuttered the plant in 2010, they also left behind above-ground storage tanks containing high levels of heavy metals including arsenic, chromium and copper.

The EPA took short-term steps to clean up the site in 2010 in response to a request from the Florida Department of Environmental Protection, including removing those tanks in addition to a mix of contaminated soil, sludge and debris.

As part of those efforts, the regulatory agency also hauled away contaminated soil from the playground at nearby Susie E. Tolbert Elementary School and tainted water and sediment from a retention pond located on school property.

On Thursday, Sky4 drone video captured students playing on an outdoor basketball court right next to the site. Residents who spoke with News4Jax were worried because they didn't see crews using any tarps to keep the dust in place.

"They need to cover up that stuff," said Annette Burroughs, who lives in the area. "They need to do more about it because it's still contamination. It's bad for us around here."

It's not just the site or the schools that have been touched by the chemicals, either. The EPA previously reported finding contamination at several nearby residences, saying people shouldn't live or work near the property.

For some, like Burroughs, picking up and moving is easier said than done.

"You know, I got bronchitis, asthma, I got cancer, so it's bad. You know I been sick a lot, so I'm catching hell. Excuse my language. It's hard for me."

North Country Public Radio
EPA grants EPA "certificate of completion" for Hudson PCB clean-up
https://www.northcountrypublicradio.org/news/story/38440/20190412/epa-grants-epa-certificate-of-completion-for-hudson-pcb-clean-up
Brian Mann and Martha Foley
Friday, April 12, 2019

General Electric's clean-up of toxic PCBs on the upper Hudson River hit another milestone yesterday. The Environmental Protection Agency gave the company a certificate of completion for dredging work done between Fort Edward and Troy.

GE spent $1.7 billion pulling tons of contaminated muck out of the Hudson River, but the governor quickly fired back against the EPA yesterday. Gov. Cuomo he will sue to force more clean-up work, likely including more dredging.

Brian Mann joined Martha Foley to talk about these developments.

Martha Foley: Remind us how PCBs got in the river and why they do matter so much.

Brian Mann: Poly-chlorinated biphenyls are an industrial chemical. GE used them for years at its plants in Washington County and for decades the company just dumped contaminated waste oil with PCBs into the river. Scientists now say this chemical is really persistent and it stays in the environment for a long-time without breaking down. It causes deformities in wildlife and also possibly cancer in people.

Martha: We need to remind people that PCBs were banned in the 1977, so this problem has been lingering for a long time and GE was finally forced by the EPA to dredge up a lot of PCBs and it was a huge project; it was very messuy. What did the federal government say yesterday about how it worked?

What the EPA says now: It's complicated

They didn't find remaining "hot spots" of PCB contamination but they did find what they call "areas of interest"Brian: What they did was they issued a kind of complicated, mixed scorecard. The EPA did give General Electric this certificate of completion for the dredging project. EPA called the project "very successful" and says their studies show that 99% of the areas sampled since the dredging show contamination levels have dropped below the benchmark standards they set. And GE quickly responded to that yesterday. They put out a statement essentially declaring victory.

Martha: But the EPA also reported there are still some areas of concern.

Brian: Absolutely. They say they didn't find remaining "hot spots" of PCB contamination, but they did find what they call "areas of interest" where PCBs remain. They say they'll monitor those sites. They also acknowledge fish are still too contaminated to eat safely. Ultimately, in the decades ahead. the EPA says GE may be forced to come back and do more clean-up if monitoring suggests additional work, possibly even additional dredging, is needed.

Martha: We already know and we could anticipate that that would not be good enough for the Cuomo administration. New York state quickly announced yesterday it'll sue the EPA over this.

Brian: Yeah, it's important to say that a lot of people, including some federal scientists and certainly environmental groups, think the situation on the Hudson with PCB contamination is still much worse than the EPA portrays. New York did its own in-depth study released last year. They concluded that more work is needed right now. The Cuomo administration has been urging the EPA not to issue this certificate of completion. So, right, yesterday Cuomo and New York state Attorney General Letitia James announced they're going to sue the EPA. In her statement, James said, "The cleanup of PCBs is incomplete, and allowing GE to walk away without accountability is dangerous to the health and wellness of New Yorkers."

Martha: So this is obviously going to the court. In the meantime, what happens along this river?

Brian: In these communities, Washington County, Saratoga County, and beyond, monitoring will go on. The EPA also says it's investigating right now to identify possible new places where PCBs were dumped in the floodplain beyond the river's banks, also in the Champlain Canal that connects the Hudson up to Lake Champlain. The EPA says it may request more specific focused clean-up projects as more of that data comes in. And in its statement, GE says the corporation will "work closely with the EPA, New York State, and local communities on other Hudson environmental projects."

Martha: Okay,. Yesterday, GE wins a certificate of completion for its PCB dredging project on the upper reaches of the Hudson River north of Albany. A new legal fight is starting, though, and meanwhile health advisories still warn against eating fish caught in the river.

Climate

Time
EPA Chief Says Climate Change Is Not His Top Priority
http://time.com/5569214/epa-chief-andrew-wheeler-climate-change/

Amy Gunia
Friday, April 12, 2019

The head of the Environmental Protection Agency (EPA) defended big energy infrastructure projects and said Thursday that climate change is not his highest priority.

Speaking to Reuters from his Washington D.C. office, agency chief Andrew Wheeler, a former coal lobbyist, said that concerns about the impact of climate change were overblown under former President Barack Obama's administration.

Wheeler, unlike President Donald Trump's first EPA chief, reiterated that he does not dismiss human-caused climate change, or contradict mainstream climate science, however.

"I said before I took this job that I believe in climate change and man has an impact on climate change," he told Reuters.

But Wheeler did cast doubt on a study released this week by EPA scientists in the journal Nature Climate Change which detailed the urgency of the issue and pressed for early adoption of mitigating strategies.

"Just because our scientists publish something in a journal doesn't mean that that's agency policy or all the other scientists at the agency agree with that particular study," he said.

The measures proposed in the paper, he added, are not EPA policy.

Read More: Here's What the EPA's Website Looks Like After a Year of Climate Change Censorship

Wheeler said he believes that water, not climate change, is the number one environmental challenge facing the planet today.

"When you have a thousand children that die a day from lack of drinking water, that's a crisis and that's a crisis that we — we collectively as the world — know how to solve that problem," he said, according to Reuters.

Last year, a landmark U.N. report gave the world 12 years to avert a climate catastrophe and pressed governments to act urgently.

President Trump has sought to boost fossil fuel production in the U.S. and earlier this week issued two executive orders to push states to speed up oil and gas pipeline construction.

Wheeler said the EPA will soon release clarifications and parameters for states to veto energy projects over environmental concerns.

"If the states that are blocking the pipelines were truly concerned about the environment they would look to where [their imported] natural gas would be coming from, and they are forcing the New England states to use Russian-produced natural gas which is not as clean as U.S. natural gas," Wheeler said. "I think it's very short-sighted."

EPA

E&E News
Employees brace for 'organized chaos'
https://www.eenews.net/greenwire/stories/1060155923/search?keyword=epa
Kevin Bogardus
Friday, April 12, 2019

EPA next week will begin implementing a massive reordering of its 10 regional branches to bring them more in line with agency headquarters in Washington, D.C.

The reorganization, known as the regional realignment, has been seven months in the making and has been beset with delays. Internal records obtained by E&E News show that EPA had originally proposed to have the initiative finished by the end of last year, which was later pushed to February and March of this year. Now, the realignment finally seems set to go forward this month.

Next week, the realignment will take effect in EPA Regions 3, 6 and 10, according to an internal email EPA Administrator Andrew Wheeler sent to employees this morning.

The agency's remaining seven regions will implement the realignment two weeks later, during the last week of April.

Gary Morton, president of American Federation of Government Employees Council 238, which represents about 8,000 EPA employees and is the agency's largest labor group, told E&E News, "Employees are very concerned about the future of their careers because of the realignment.

"Anytime you have new relationships, or new seating, it is a recipe for organized chaos until it gets sorted out," Morton said.

"Seating is a big thing. Seniority will be changing. Also, employees are jockeying for positions for career development. Some are happy with the realignment. Some are not happy with the realignment," he added.

Other union officials agreed that the continued change at EPA under the Trump administration has unsettled staff.

"The employees are anxious, and many do not like it when a change occurs," said Dianna Myers, president of AFGE Local 534, which represents EPA Region 4 employees.

She added, "They are interested in what does this change mean for me? What is going to be my job? Am I going to keep my pay? Who is going to be my boss? And am I going to have to move to another office?"

Each regional office will have eight divisions that will sit under the regional administrator's office, according to the realignment plan.

The proposal, first announced in September, is designed so that each branch will mirror the functions of headquarters, including programs for air, water, emergency response, enforcement and science. In addition, programs like children's health, environmental justice, tribal and international affairs, as well as geographic programs where applicable, will sit in the regional administrator's immediate office.

At a House hearing earlier this week, Wheeler was asked about the agency's plans to realign its regions. He said six of the regions had enforcement divisions, while four did not.

"They sprinkle their enforcement people throughout each of the program offices," Wheeler said. "One region didn't have an air division in the title, so people had a problem trying to figure out who to go to from region to region if you needed a permit or if you needed help on a particular issue."

Wheeler added, "It's going to allow, for example, the enforcement office of EPA headquarters to work more closely with the enforcement divisions around the country, to make sure there is continuity and to make sure that there is consistency between the regions."

Wheeler also said at the hearing that the realignment would take effect this Monday. He did not make the distinction that it would be implemented in some of EPA's regions later this month.

Agreements for training, reassignment

As part of the reorganization process, EPA has signed several agreements with unions on how to implement the realignment.

The memorandums of understanding, or MOUs, have similar provisions, including how to negotiate office space moves and telework. They also state that there will be no staff reductions or grade changes due to the realignment.

The agreements also try to mitigate the reorganization's impacts.

One provision included in AFGE Council 238's MOU with EPA for the realignment says that if an employee is assigned new duties, management will evaluate whether the employee needs training to perform those duties.

"If, in management's determination, the employee requires additional training, training will be provided consistent with the employee's position description and will be approved when feasible," says the agreement.

NTEU's agreement with EPA regarding the realignment also includes a similar provision. Under the MOU, EPA should provide training for reassigned employees "to meet new organizational objectives" due to the reorganization.

NTEU has chapters representing EPA employees in Cincinnati; Edison, N.J.; Kansas City, Mo.; San Francisco; and the agency's Washington, D.C., headquarters.

In a statement shared with E&E News, NTEU President Tony Reardon said EPA has the discretion to make such changes, but his union wants to make sure employees are treated fairly and given a chance to transfer.

"We are concerned that the realignment is causing some veteran employees to decide to leave EPA rather than be relocated, which is an unfortunate loss of valuable experience to the agency," Reardon said.

"EPA employees are dedicated to their mission of protecting the environment and public health, and it is unfortunate that the agency has chosen to disrupt their personal and professional lives with this realignment."

Also included in the agreements are provisions letting employees request reassignments from their new jobs after a certain number of days since the realignment has been implemented.

Asked if the agency was worried that it would be overwhelmed with those requests, EPA spokesman James Hewitt told E&E News, "No."

Unions also sought to protect specific sets of employees under the realignment. Included in both NTEU's MOU and a separate agreement with the Engineers and Scientists of California was a provision that EPA would provide a briefing to the unions and affected Superfund program employees who have been moved into the Office of Public Affairs.

After this reorganization, employees may end up in new jobs with new supervisors. Some of those effects are already being felt as people prepare for the change.

Jeanne Schulze, president of AFGE Local 1003, which represents EPA Region 6 employees, said she has already received two complaints from EPA employees she represents regarding their would-be supervisors under the realignment.

"I'm concerned people [the would-be supervisors] are trying to throw their weight around," Schulze said. "It's part of this climate we are in. When people feel stressed or anxious, they do things they wouldn't otherwise do."

Concerns mount that plan will spur less enforcement

One major change from the realignment will be the establishment of enforcement divisions in several regional offices. Union officials are worried that will take control of enforcement decisions from career staff over to political leadership.

Under the realignment, a new enforcement division will be set up in EPA Region 5. Prior to the reorganization, enforcement decisions were made by career staff in other divisions, with multiple levels between those making the decisions and headquarters back in Washington, Nicole Cantello, president of AFGE Local 704, which represents EPA Region 5 employees, told E&E News.

"It sets up a command-and-control structure where the agency can limit enforcement," Cantello said about the realignment, adding that she is worried that the Trump administration will not enforce the law and will allow more pollution.

"This structure will allow this administration to get away with less enforcement. That is our concern, and we believe that will happen in the future," she said.

Cantello said enforcement staffers in Region 5 are convinced that the realignment was designed to make the Chicago office's enforcement function less effective. She noted the leading role the Midwest branch has played in EPA's national enforcement initiatives to target pollution, including its push against coal-fired power plants.

Enforcement attorneys are expected to be moved around under EPA's realignment. Britta Copt, president of AFGE Local 3607, which represents EPA Region 8 employees, said her branch already has an enforcement division but there will be changes under the realignment.

"The legal enforcement attorneys are being taken out of the enforcement division and being put in the Office of Regional Counsel with the other attorneys," Copt said.

Steve Calder, president of AFGE Local 3428, which represents EPA Region 1 employees, said a similar change is afoot in his branch.

"One of the concerns with that change is that the attorneys who only worked on enforcement will now be in the Office of Regional Counsel and can work on other things," Calder said, with that regional counsel office setting those attorneys' priorities. "It aligns with the general counsel and headquarters."

EPA defended the move to set up enforcement divisions in the regions, saying the realignment's purpose is to bring consistency across the agency.

"The realignment will result in enforcement divisions in each region, just as EPA headquarters has been organized for years. Currently, the enforcement organizational structure varies from region to region, without explanation or justification," Hewitt said.

Copt said "some weird things" have already popped up under the coming reorganization. She mentioned one person who has 80% of her duties in one program, while the remaining 20% is in another program. Those duties will be split into different divisions under the realignment.

"It hasn't been decided yet whether she is going to keep that 20% of those duties. Are they going to go to another person, or are we just not going to do those duties? There are small examples like that," Copt said.

"There is a lot of people who will have their jobs divided up."

Worries about 'staffing crisis'
EPA kept Congress in the loop regarding the realignment.

The agency prepared a congressional briefing document last November. Acting Deputy EPA Administrator Henry Darwin also discussed the agency's reorganization plans with staff for the Senate Environment and Public Works Committee last year (E&E News PM, Oct. 25, 2018).

Capitol Hill seemingly had questions about EPA's realignment. Asked about delays to implementing the reorganization, Hewitt said lawmakers wanted more time to review the proposal.

"Congress asked the agency for more time to discuss and consider our plan, which recently resulted in a 'no objection' to the realignment," said the EPA spokesman.

EPA was also sidelined earlier this year by the partial government shutdown that shuttered several agencies for weeks.

Earlier this week, Sen. Tom Udall (D-N.M.), ranking member on the Senate Appropriations subcommittee that oversees EPA, said in a letter to Wheeler that he didn't object to EPA's realignment. Nevertheless, the appropriator pushed the agency to bolster its declining workforce.

"For EPA to turn around this staffing crisis, agency leadership must follow the direction of Congress by focusing on hiring and retaining qualified staff rather than allowing such drastic staffing losses," Udall said (E&E Daily, April 11).

EPA's overall staffing levels are down by 8% since fiscal 2016, with the enforcement office losing 19% of its staff, the senator said.

Union officials are worried that the realignment will paper over the cracks in the agency's staffing. Schulze in EPA Region 6 said they are losing "highly graded, highly skilled employees" who are not being replaced.

"I'm really worried about backfilling the mission-critical positions, that this is being used to cover up what's happening, which is the mass exodus of staff, and we don't have enough staff to do the work of the agency," Schulze said.

Several EPA employees will be shifted around under the plan. Cantello said in EPA Region 5, about 100 people will be put under new position descriptions, while another 300 will be slotted into a new division.

"It is causing a gigantic upheaval," Cantello said. "This is the largest disruption that I can remember having in my 25-year career here."

Delaware State News
DSU renews research partnership with EPA
https://delawarestatenews.net/schools/dsu-renews-research-partnership-with-epa/
Thursday, April 11, 2019

DOVER — The U.S. Environmental Protection Agency signed a renewed memorandum of understanding with Delaware State University to continue to work together to enhance research, outreach, career development and "stewardship" in the environmental sciences at the university. The partnership originally began in 2012.

New to the partnership, the Delaware Department of Natural Resources and Environmental Control and the Delaware Department of Health and Social Services also signed on to participate.

"EPA has a long history of partnership with Delaware State University, and the Trump administration is pleased to build on that success today," said EPA Regional Administrator Cosmo Servidio. "This partnership will link education, outreach and hands-on work experience to strengthen interest in environmental careers and encourage environmentalism. The partnership also strives to ensure that careers in science reflect the diversity of the communities we serve and our nation as a whole."

The MOU, signed at a campus ceremony Thursday, formalizes the renewed partnership.

"This partnership is consistent with our top priority of student success as it will expand the inroads to career possibilities for our graduates in the environmental-related professions," said Wilma Mishoe, the university president. "This

agreement also aligns well with the University's Core Value of 'Community' as it will also promote a heightened consciousness among our students of their individual responsibilities to protect the environment."

DNREC believes their involvement will increase the availability of internships to students.

"Today, we are continuing a partnership that unites our three government agencies with Delaware State University to work toward the common goal of providing broader opportunities for students in environmental science, public health, and related fields," said DNREC Secretary Shawn Garvin. "This partnership also gives us the opportunity to promote talent development and recruitment of students to form the next generation of our environmental workforce."

Similarly, DHSS feels their participation will enhance the university's reach and will support a highly skilled future workforce.

"We are excited about the potential of this partnership in developing the public health employees of the future, whether in state government or in the private or nonprofit sectors," said DHSS Secretary Dr. Kara Odom Walker. "Plus, we look forward to strengthening our existing relationship with Delaware State University as we further community initiatives across our state that will help us build a stronger and healthier Delaware."

The university says they hope to "build on the success of the original MOU" signed in 2012, by aiming to:

•Promote student recruitment, internships, career development and employment in agricultural and environmental sciences, public health and related fields

•Enhance professional development between partners

•Support the enhancement of DSU's environmental and public health sciences curriculum

•Enhance the involvement in sustainable environmental and public health initiatives within the DSU campus community and surrounding off-campus communities

•Support capacity-building efforts directed to increase DSU's participation in federal programs at EPA and state programs at DNREC and DHSS

•Coordinate summer environmental programs for students from DSU and local high schools.

The MOU is part of EPA's Minority Academic Institutions Program, which was created with the intent to increase opportunities for Minority Academic Institutions to participate in federal programs. EPA works with these schools to attempt to increase participation.

For more information about EPA's Minority Academic Institutions Program, visit: intranet.epa.gov/r3intran/ocr/minority_institutions.html.

InsideEPA
IRIS' High-Profile Chief To Be Shifted To New Role Under ORD Reorganization
https://insideepa.com/daily-news/iris-high-profile-chief-be-shifted-new-role-under-ord-reorganization
Maria Hegstad
Friday, April 12, 2019

Tina Bahadori, chief of the EPA research center that oversees its influential Integrated Risk Information System (IRIS) program, is slated to be shifted to a new role as part of the Office of Research and Development's (ORD) reorganization, a move that some say may be driven by her efforts to advance a program the Trump administration is seeking to sideline.

"There's no more competent person to lead the IRIS program" than Bahadori, one former EPA source says, adding that she is viewed as a "real visionary" in trying to address longstanding issues with the ponderous and controversial IRIS program during her short tenure. "I would question why someone of her expertise was removed."

The move underscores concerns that Democrats and other critics have raised over steps that agency leaders are taking to sideline IRIS, including scaling back its assessment agenda, directing staff time to other programs, trying to cut its budget and other steps.

In a statement, an EPA spokesperson did not address Bahadori's new role but says that "All of IRIS's functions are staying with IRIS and will be folded into" a new research center the agency is creating as part of ORD's reorganization.

News of Bahadori's move is detailed in new charts that ORD recently released identifying the new directors and deputy directors for the seven proposed managing offices and scientific centers, as well as proposed new national program directors.

Some changes were anticipated, since ORD is planning to merge with the previously separate Office of the Science Advisor (OSA) while consolidating from three labs and four centers into just four centers.

Under the reorganized plan, Bahadori is slated to leave her position as director of the National Center for Environmental Assessment (NCEA) -- which oversees IRIS -- to take the role of national program director of the new Human Health and Ecological Risk Assessment program.

Before becoming NCEA director in the waning days of the Obama EPA, Bahdori had been director of one of the other, larger national research programs, the Chemical Safety and Sustainability program.

Under the reorganization, NCEA is slated to merge with two existing labs, the National Exposure Research Lab and the National Health and Environmental Effects Research Lab (NHEERL). The three existing units are proposed to form the new Center for Public Health and Environmental Assessment (CPHEA).

The EPA spokesperson said IRIS will be folded into CPHEA, adding that "research conducted by ORD will continue to be governed by the Strategic Research Action Plans and implemented by the new Centers."

The new CPHEA is to be led by Wayne Cascio, currently the director of NHEERL, with Kay Holt, a former deputy director of NHEERL, slated to be the center's deputy. In his new role as CPHEA director, Cascio, a cardiologist and long-time ORD scientist who studies air pollution's effects on cardiovascular health, will oversee the IRIS program.

'Excellent Scientist'

Cascio "is an excellent scientist," the agency source says, but adds that his expertise is in public health, where the focus is on addressing disease in the population, not predictive risk assessment methods.

As a result, he may lack the background and expertise necessary to engage with Nancy Beck, the administration's deputy chief of EPA's toxics office and a long-time critic of the IRIS program, on controversial risk assessment issues, the source adds.

Cascio does have experience with controversial EPA programs. Cascio used to run EPA's program exposing human volunteers to air pollution to better understand the effects. The program was sued in 2012 by a free-market group, with Cascio providing a declaration to the court regarding the value of the study in question.

Kris Thayer, an expert in systematic review approaches who Bahadori brought in to lead the IRIS program from the National Toxicology Program, will remain in her position.

Bahadori and Thayer have been largely responsible for putting the IRIS program on a more solid footing after a high-profile critique from the National Academy of Sciences (NAS) in 2011. Among other things, they pledged to shift the IRIS "paradigm," including working quickly to implement long-pending reforms, speeding release of its chemical assessments and making the program more relevant to partners inside and outside the agency.

Keys to their plans were planning for speedier "targeted" assessments, and implementing "systematic review" for guiding assessments -- a major recommendation from NAS. Their efforts won immediate, strong support from EPA advisors who voted unanimously to tout the benefits of IRIS and NCEA.

While the ORD reorganization is staff led, and generally viewed by sources inside and outside the agency as the natural outcome of the decades-long decline in the office's funding and personnel levels, multiple sources have suggested that Bahadori was moved away from the program because of her efforts to advance IRIS -- efforts at odds with Trump EPA leaders who have sought to sideline the program.

Bahadori and Beck "are the two people at the most senior level who managed risk assessment resources at EPA -- one a career person and one a political -- with two very difficult perspectives on risk assessment," an agency source says. "It reduces the number of individuals with that [expertise and stature] to one."

Beck, a toxicologist who came to the Trump EPA from the American Chemistry Council (ACC), has been a long-time critic of the IRIS program, arguing that its assessments are overly conservative and will lead to unnecessarily stringent rules. Bahadori is a chemical engineer who joined EPA's ranks of career scientists seven years ago, also from ACC, where she managed its long-range research program.

The agency source points to the two leaders' different approaches on systematic review, a process derived from medical research for gathering and evaluating scientific evidence to increase the rigor and transparency of chemical evaluations and recommended by NAS for EPA's risk work.

"Tina Bahadori is known for active engagement with NAS and taking the lead in working with NAS to develop systematic review" for the IRIS program, the source says, noting that her efforts and those of Thayer, the systematic review expert, were recognized by NAS members during a short review last year.

NAS' April 2018 report said that its authors were "impressed with the changes being instituted in the IRIS program since" NAS' last IRIS review, published in 2014.

By contrast, the source says, "Nancy Beck has a [systematic review] approach [developed for the toxics office] that is not recognized anywhere, but she takes issues with" IRIS' approach. "It's not been subjected to any review, though there's a promise of a future review" by the NAS, a commitment that Administrator Andrew Wheeler made to Democratic senators to smooth confirmation process for toxics chief Alexandra Dunn.

"This all has to be seen in light of the transformation this administration wants to make in [EPA] risk assessment [practices], and a systematic attempt to undermine a process developed over decades of public peer review," the source adds. "Our current approach is approved by [NAS] -- including the defaults" EPA uses in its risk analyses to address various uncertainties but which are often blamed for making assessments too stringent.

'Ambitious Schedule'

While EPA's spokesperson and other agency officials say IRIS will continue, they are also seeking to assure staff that no one will lose their jobs as part of the ORD reorganization, an effort that acting research chief Jennifer Orme-Zavaleta says is on an ambitious schedule.

She told Inside EPA last month that Wheeler is pushing for the ORD overhaul to be implemented at the start of fiscal year 2020.

At a reorganization update meeting last week, ORD leaders sought to assuage staff concerns by reiterating that no one will lose their jobs or be forced to move because of the reorganization, one ORD source says. Going forward, staff have been asked to comment on a two-question survey asking whether any "key functions" are missing from the proposed new structure and whether any key functions should be added or realigned in a different way, the source adds.

But one official is notably absent from the reorganization plan: Thomas Sinks, the current director of OSA.

OSA is currently a separate science office outside ORD that oversees several interagency science policy fora. It is slated to be merged with ORD's science policy office, creating the new Office of Science Advisor, Policy & Engagement. Its director is to be Mary Ross, currently Bahadori's deputy at NCEA.

Kacee Deener, acting director of ORD's policy office, is to be the deputy director of the new center. Sinks, who was brought to OSA from the Centers for Disease Control and Prevention by former Obama EPA Science Advisor Tom Burke, does not appear on the reorganization chart.

The schedule as planned calls for listening sessions among ORD leaders and staff in mid-April to May, and finalizing the plan and staffing in mid-May to June, the ORD source says. Official notification to Congress and the unions representing ORD staff are planned for July 1 -- Sept. 30, the source adds

Fuel

Biomass
EPA seeks comments on SRE portion of proposed REGS rule
http://www.biomassmagazine.com/articles/16077/epa-seeks-comments-on-sre-portion-of-proposed-regs-rule
Erin Voegele
Friday, April 12, 2019

The U.S. EPA announced April 12 that it will reopen the comment period on one aspect of proposed rule issued in 2016 in an effort to "expand transparency surrounding the small refinery exemption program and provide further opportunity for input."

The agency's announcement relates to its proposed renewables enhancement and growth support (REGS) rule, which was first released in October 2016. The proposal was originally subject to a 60-day comment period, which was scheduled to close on Jan. 17, 2017. The comment period was later extended through Feb. 16, 2017. The proposed rule has now been pending for more than two years.

The proposed rule contains a wide range of provisions related to the Renewable Fuel Standard. Some major changes proposed by the rulemaking include an updated RFS regulatory structure that would allow biofuel producers to partially process renewable feedstocks at one facility process them into renewable fuels at another facility using existing pathways. The proposal also aims to revise gasoline regulations to make it clear E16-E83 fuel blend are not gasoline and are not fully subject to gasoline quality standards, a change the agency said would allow for expanded availability of high ethanol fuel blends for use in flex fuel vehicles (FFVs). In addition, the rule also includes new feedstock approvals for cellulosic biofuels produced from short-rotation poplar and willow trees, cellulosic diesel produced from co-processing cellulosic feedstocks with petroleum, and renewable diesel and biodiesel produced from non-cellulosic portions of separated food waste.

The proposed rule also contains numerous small changes and updates to RFS regulations, including provisions related to small refinery exemptions (SREs). The SRE portion of the REGS rule is the subject of the agency's new comment period.

In the April 12 notice posted to its website, the EPA said language in the REGS rule proposed to codify a determination that basic information related to EPA actions on petitions for SREs may not be claimed as confidential business information (CBI). "Specifically, the proposed regulations would specify that with respect to each decision on a small refinery/refiner exemption request, we would release to the pubic the petitioner's name, the name and location of the

facility for which relief was requested, the general nature of the relief requested, the time period for which relief was requested, and the extent to which the EPA granted or denied the requested relief," said the EPA in the notice.

The EPA is opening a new comment period to provide members of the public to provide additional input on that proposed determination. The agency said it is not seeking comments on any other aspects of the proposed REGS rule at this time, and any comments received on topics other than the proposed CBI determination will be deemed beyond-the-scope. The 15-day comment period will open following publication of the notice in the Federal Register. Comments can be filed on www.Regulations.gov under Docket ID No. EPA-HQ-OAR-2016-0041. A prepublication version of the notice can be downloaded from the EPA website.

Growth Energy called the EPA's effort to increase transparency on SREs helpful progress, but said the agency should go even further. "Any move by EPA to increase transparency is long overdue but always welcome by this industry," said Emily Skor, CEO of Growth Energy. "For years, we've been trying to navigate these exemptions in the dark, all while over 2.6 billion gallons of ethanol demand has been lost. It is imperative that EPA and the Department of Energy reveal the methodology behind granting these exemptions, and for EPA to fully recognize that every time they grant an exemption, they are taking away critical demand from our already struggling rural economy. We look forward to participating in EPA's comment period on this proposal and continuing to impress upon them the dire importance of more transparency for our industry and for rural America."

Bloomberg Environment
EPA Mulls Disclosing Info on Refiners Seeking Biofuel Waivers
https://news.bloombergenvironment.com/environment-and-energy/epa-mulls-disclosing-info-on-refiners-seeking-biofuel-waivers
Jennifer A. Dlouhy
Friday, April 12, 2019

- Small refiners under microscope
- Disclosure could make markets more transparent

The Environmental Protection Agency is asking for public comment on a plan to divulge more details about small refineries seeking exemptions from U.S. biofuel mandates, including data previously shielded as confidential business information.

The agency says in a notice it is opening 15-day window for comments on revealing "basic information" about exemption requests, including the identity of each petitioner, the name and location of the facility at issue, the general nature of the request, the time period at issue, and the extent to which EPA granted or denied the application.

The move responds to a push by biofuel producers advocating for more transparency on the waivers, including which refineries are seeking them and how their approvals have been justified.

Breitbart
Oil, Gas Industry Workers Praise Trump for Exec Orders Streamlining Pipeline Permit Process
https://www.breitbart.com/politics/2019/04/11/workers-praise-trump-exec-orders-streamlining-pipeline-process/
Penny Starr
Thursday, April 11, 2019

President Donald Trump signed two executive orders on Wednesday to push back against lawsuits and other efforts in certain states that are restraining his administration's efforts to build energy infrastructure, including streamlining the permitting process for domestic and border-crossing oil and gas pipelines.

The orders provide guidance for several federal agencies, including the Environmental Protection Agency (EPA), the Department of Energy, and the Department of Transportation, to reevaluate the portion of the Clean Water Act that

gives states authority over infrastructure projects that could affect water quality or pose other perceived environmental threats.

The infrastructure order directs that the "Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce approve rights-of-way for energy infrastructure through lands owned by or within the jurisdiction or control of the United States."

Trump signed the orders in Crosby, Texas, while visiting the International Union of Operating Engineers International Training and Education Center, a union-run company.

"Under this administration, we have ended the war on American energy like never before," Trump said ahead of signing the executive orders. "Nobody believed that this was going to happen."

"And we put thousands and thousands of patriotic union members like you to work building our energy future," Trump said. "Since the election, we have created more than 5.5 million new jobs, and more than 60,000 brand new oil and gas pipeline construction jobs."

The two orders will affect the construction of oil and gas pipelines, including the one that would help get the Keystone XL pipeline project completed by giving Trump authority to approve an energy infrastructure project that crosses an international border, in this case, the border between Canada and the United States.

One order also would allow natural gas to be transported by rail and tanker truck.

While Democrats and environmentalists are trashing Trump, claiming he is assaulting states' rights and the environment, those who work in the industry and officials who want to protect existing jobs and create new jobs in their states are praising the president's move.

"Today President Trump signed 2 executive orders prioritizing energy infrastructure & streamlining the permitting process for domestic and cross-border projects. I appreciate @POTUS's strong commitment to the improvement and modernization of our nation's energy infrastructure," Sen. Lisa Murkowski (R-AK) tweeted.

Today President Trump signed 2 executive orders prioritizing energy infrastructure & streamlining the permitting process for domestic and cross-border projects. I appreciate @POTUS's strong commitment to the improvement and modernization of our nation's energy infrastructure.
— Sen. Lisa Murkowski (@lisamurkowski) April 11, 2019

"Today, President Donald Trump will sign executive orders to make it more difficult for state governments to block permits for pipelines and other energy-related structures under the Clean Water Act," the free market think tank the Heartland Institute said in a statement.

"The Trump administration says this is necessary because states controlled by Democrats, such as New York, have abused this power to prevent infrastructure projects, including natural gas pipelines and coal export terminals."

"For years, far-left politicians have abused their authority and deprived America of much-needed energy infrastructure," a statement from the Institute's climate experts said. "This executive order by President Donald Trump is just what is needed to create thousands more high-paying jobs in the energy industry, protect U.S. national security, and enhance the reliability and affordability of America's energy supply."

"Pipelines are the safest, most environmentally sound way to transport natural gas and oil to American consumers, and API [American Petroleum Institute] supports a robust permitting process for moving pipeline and other critical infrastructure projects forward," API President and CEO Mike Sommers said in a statement. "The current process has too often resulted in protracted reviews, stalled decision-making, and canceled projects that increase costs for consumers."

"Today's executive orders will strengthen the Clean Water Act by requiring federal agencies to review and make timely permitting decisions in compliance with the law," Sommers said. "We applaud the administration for their commitment to building America's pipeline infrastructure, enabling the safe delivery of energy and creating the jobs that working families and businesses rely on each and every day."

The infrastructure order says in part:

The United States is blessed with plentiful energy resources, including abundant supplies of coal, oil, and natural gas. Producers in America have demonstrated a remarkable ability to harness innovation and to cost-effectively unlock new energy supplies, making our country a dominant energy force. In fact, last year the United States surpassed production records set nearly 5 decades ago and is in all likelihood now the largest producer of crude oil in the world. We are also the world's leading producer of natural gas, and we became a net exporter in 2017 for the first time since 1957. The United States will continue to be the undisputed global leader in crude oil and natural gas production for the foreseeable future.

These robust energy supplies present the United States with tremendous economic opportunities. To fully realize this economic potential, however, the United States needs infrastructure capable of safely and efficiently transporting these plentiful resources to end users. Without it, energy costs will rise and the national energy market will be stifled; job growth will be hampered; and the manufacturing and geopolitical advantages of the United States will erode. To enable the timely construction of the infrastructure needed to move our energy resources through domestic and international commerce, the Federal Government must promote efficient permitting processes and reduce regulatory uncertainties that currently make energy infrastructure projects expensive and that discourage new investment. Enhancing our Nation's energy infrastructure, including facilities for the transmission, distribution, storage, and processing of energy resources, will ensure that our Nation's vast reserves of these resources can reach vital markets.

Doing so will also help families and businesses in States with energy constraints to access affordable and reliable domestic energy resources. By promoting the development of new energy infrastructure, the United States will make energy more affordable, while safeguarding the environment and advancing our Nation's economic and geopolitical advantages.

"Thank you to the extraordinary devotion of all of you to our country," Trump said to the workers in Texas. "Together, we are making America stronger and prouder and greater than ever before."

E&E News
Court scraps 'archaic' power plant controls
https://www.eenews.net/eenewspm/2019/04/12/stories/1060156091
Pamela King
Friday, April 12, 2019

A legal battle has raged over EPA's rule limiting toxic discharges from power plants.

A federal appellate court today asked EPA to take a second look at power plant rules introduced under the Obama administration.

The 5th U.S. Circuit Court of Appeals agreed with environmental groups that EPA did not use best available technology (BAT) to design so-called effluent limitation guidelines for legacy wastewater and combustion residual leachate.

"Whereas the BAT for the other streams adopts modern technologies, they claim the agency arbitrarily set BAT for legacy wastewater and leachate using the same archaic technology in place since 1982," Judge Kyle Duncan, a President Trump appointee, wrote for the three-judge panel.

"It was as if Apple unveiled the new iMac, and it was a Commodore 64."

President George W. Bush appointee Catharina Haynes and Trump appointee James Ho also joined the opinion.

Environmental challengers, led by Earthjustice, last year appealed a lower court's decision to toss their lawsuit (Greenwire, May 11, 2018).

The Trump administration had put the rule on hold as EPA reconsidered its approach.

"I would argue that the strength of today's decision calls into question the legality of EPA's plans to weaken the rule and instead makes clear that the rule should be made stronger," said Thomas Cmar, deputy managing attorney for Earthjustice's coal program.

E&E News
EPA may disclose refineries that get blending exemptions
https://www.eenews.net/eenewspm/2019/04/12/stories/1060156023
Marc Heller
Friday, April 12, 2019

EPA is considering disclosing which small refineries receive exemptions from ethanol-blending requirements.

EPA said today it's considering publicly identifying which small refineries receive exemptions from ethanol-blending requirements and will take comment on the proposal for 15 days.

The agency's announcement in a formal notice set off a new round of complaint and praise from ethanol and petroleum industry groups on an issue that sharply divides them.

EPA said the notice reopens a public comment period on aspects of a 2016 proposed regulation dealing with the types of information that can be revealed about refineries seeking relief from the renewable fuel standard.

In this case, the relief comes from economic hardship exemptions, which temporarily free refineries from biofuel blending requirements, including the purchase of renewable fuel credits to show compliance with the RFS.

EPA said it may make public the names of companies that seek and obtain exemptions, as well as the name and location of the facility, the nature of the relief requested, the time period at issue and the extent to which EPA granted or denied the request.

The Fueling American Jobs Coalition, which represents refiners and others opposed to the change, said revealing such information could put certain refineries at an economic disadvantage. Small refineries that don't blend biofuel buy the renewable fuel credits, called Renewable Identification Numbers, or RINs, to show compliance.

"While appropriate transparency in the RIN market is essential, EPA's most recent proposal will cause more harm than good. The data underlying Small Refinery Exemption requests reflects the underlying financial health of facilities in the highly competitive refining sector," the group said in a statement.

Ethanol advocates welcomed the move. They've complained that EPA grants too many exemptions and that some of the refineries are owned by large companies that aren't struggling — when companies have been identified in news reports or in public filings.

Growth Energy, an ethanol trade group, said that the proposal is a "first step" toward more transparency and that EPA should also reveal the methodology for granting exemptions.

The National Biodiesel Board, an industry group, said that it supports the proposal but that EPA should go further by making the information public when refineries request the exemption, rather than waiting until it's granted.

Politico Pro
EPA considers identifying refiners seeking biofuel waivers
https://subscriber.politicopro.com/article/2019/04/epa-considers-identifying-refiners-seeking-biofuel-waivers-3083261
Friday, April 12, 2019

EPA is considering changing its policy to allow it to identify the oil refiners seeking waivers that exempt them from biofuel blending requirements under the Renewable Fuel Standard, according to a request for comment the agency released today.

EPA has deemed most information about RFS waiver applicants to be Confidential Business Information, which restricts its public disclosure. EPA will take comment on whether it should release petitioners' names, identify the facility and its location, describe the relief requested and the time period it would cover, as well as EPA 's response to the request.

The agency has come under fire for dramatically expanding the number of waivers it has granted. It has yet to announce decisions on the 39 applications it has for the 2018 compliance year.
Ethanol groups applauded the move, but called for EPA to go further.

"Any move by EPA to increase transparency is long overdue but always welcome by this industry," Emily Skor, CEO of Growth Energy, an ethanol producers trade association, said in a statement. "It is imperative that EPA and the Department of Energy reveal the methodology behind granting these exemptions."

Refiners argued that the rule could identify refineries that are struggling and create business risks for the companies that own them.

"EPA's most recent proposal will cause more harm than good," the Fueling American Jobs Coalition, a coalition of refiners, said in a statement.

Politico Pro
5th Circuit rules for greens in coal plant discharge case
https://subscriber.politicopro.com/article/2019/04/5th-circuit-rules-for-greens-in-coal-plant-discharge-case-3084871
Friday, April 12, 2019

A federal appeals court has knocked down two provisions of the Obama administration's water discharge limits for coal-fired power plants as not sufficiently environmentally protective.

A three -udge panel for the U.S. Court of Appeals for the 5th Circuit ruled unanimously today for environmental groups challenging the 2015 effluent limitation guidelines — specifically the provisions governing the handling of legacy wastewater and water that percolates through landfills known as "leachate."

In the opinion, Judge Stuart Kyle Duncan, a Trump appointee, underscored that the 2015 rule updated guidelines not revised since 1982 — "the same year that saw the release of the first CD player, the Sony Watchman pocket television, and the Commodore 64 home computer."

While EPA updated the technology requirements for other waste streams in the rule, EPA required no upgrades for handling of legacy wastewater and leachate — together the source of "massive amounts of water pollution," Duncan wrote.

"It was as if Apple unveiled the new iMac, and it was a Commodore 64," Duncan wrote, vacating those portions of the rule and sending them back to EPA.

Duncan was joined in the ruling by Judge Catharina Haynes, a George W. Bush appointee and Judge James Ho, who was also appointed by President Donald Trump.

Environmental groups were not the only ones to take issue with the Obama-era regulation; industry groups and drinking water utilities also brought challenges. However, in 2017, EPA announced it would reconsider the provisions of the rule being challenged by those groups and the court put their petitions on hold.

Reuters
UPDATE 1-U.S. EPA revives provision that could name oil refiners applying for biofuel waivers
https://af.reuters.com/article/commoditiesNews/idAFL1N21U0TD
Humeyra Pamuk
Friday, April 12, 2019

(Adds details on refining rules, details of proposal)

By Humeyra Pamuk

WASHINGTON, April 12 (Reuters) - The U.S. Environmental Protection Agency on Friday took the first step to revive part of a rule that could, if finalized, reveal the names of oil refineries which applied for exemptions from the nation's biofuel laws.

The move is seen as a win for the corn industry, which has criticized the waiver program due to its lack of transparency. The EPA only in 2017 first began releasing the number of waiver petitions it has received and granted.

Refiners are required to blend biofuels into the nation's gasoline pool, but small operations can apply for exemptions. The Trump administration made extensive use of such waivers in the last two years, saving refiners money but angering the corn lobby, particularly after major companies like Exxon Mobil Corp received exemptions for certain facilities.

The ethanol industry claims the exemptions have been overused, threatening demand for corn-based ethanol at a time when farmers are already struggling.

On Friday, the EPA signed a Federal Register notice saying it is reopening the comment period for a provision in a rule related to the small refinery exemption program that was first introduced in 2016.

The provision proposes to "codify a determination that basic information related to EPA actions on petitions for RFS small refinery and small refiner exemptions may not be claimed as confidential business information," according to the proposal on the Federal Registry website.

Under the U.S. Renewable Fuel Standard (RFS) program, refiners must blend certain volumes of biofuels like ethanol into their fuel each year or purchase credits from those that do. But small refineries with a capacity of less than 75,000 barrels per day (bpd) can obtain waivers if they prove that compliance with RFS would cause them significant financial strain.

WBFO
Trump order could revive construction of Constitution Pipeline in NY and PA
https://news.wbfo.org/post/trump-order-could-revive-construction-constitution-pipeline-ny-and-pa
Amy Sisk
Friday, April 12, 2019

President Donald Trump wants to make it easier for companies to transport natural gas from places like Pennsylvania to the Northeast. He signed an executive order this week that would speed up pipeline permitting. It takes aim at states like New York that have blocked pipeline projects that would carry Marcellus Shale gas to markets in the Northeast, where gas is not always readily available. Trump's order also opens the door to natural gas being transported by rail.

Megan Holleran stands by a sign on her family's land. The Hollerans lost their court battle to save their maple trees from eminent domain seizure. The trees are being cut to make way for the new Constitution Pipeline, which has been stalled amid legal battles.

"Too often, badly needed energy infrastructure is being held back by special interest groups, entrenched bureaucracies and radical activists," the president told a crowd gathered Wednesday at an International Union of Operating Engineers facility in Crosby, Texas before he signed several executive orders related to oil and gas.

Trump's directive stems in part from New York's denial of a water quality permit for the Constitution Pipeline, among other projects blocked by states under the federal Clean Water Act.

Demand for natural gas growing across the Northeast. Meanwhile, natural gas production is booming in Pennsylvania. Connecting the two requires building pipelines across New York — something Gov. Andrew Cuomo and the Department of Environmental Conservation have persistently blocked, declining to grant the necessary water quality permits.

Darren Suarez with the Business Council of New York says three pipeline projects in particular — the Millennium, Constitution and Northern Access pipelines — have been stalled by New York water quality reviews.

"Traditionally, it should take a year for the review process," Suarez said. "In New York State, that process has been extended out for over six years."

Suarez said that's hurting the bottom line of businesses in the Northeast who want to switch to natural gas for heating and transportation. Gas is generally cheaper than oil, and burns more cleanly as well.

In his executive order, Trump directs the Environmental Protection Agency to issue new permitting guidance to states. He did not explicitly say how states' authority should change, but he said the EPA's review should focus on "the need to promote timely Federal-State cooperation and collaboration" and "the appropriate scope of water quality reviews."

Trump also asked the EPA to go a step further by formally revising its rules surrounding that portion of the Clean Water Act.

Pennsylvania's natural gas industry welcomed Trump's order.

"If you have the rules in place where the game is fair in terms of siting pipelines and critical infrastructure projects, then I think it opens the door for new development," said David Spigelmyer, president of the Marcellus Shale Coalition, an industry trade group.

Still, the fate of the Constitution Pipeline is unclear.

Williams, the lead developer of the project, said in a statement that it "supports efforts to foster coordination, predictability and transparency in federal environmental review and permitting processes for energy infrastructure projects." The company, however, declined to comment specifically on the president's order and what it means for the future of the pipeline.

Mark Szybist, a senior attorney for the Natural Resources Defense Council, said he anticipates the legal battle over the pipeline will continue following Trump's order.

"I suspect that was at least the intent of this executive order, to change the outcome of projects like the Constitution Pipeline," he said. "How well that intent will succeed I think remains to be seen."

He pointed to a statement from Democrat Cuomo, who called Trump's executive order a "gross overreach" of federal power.

"States must have a role in the process for siting energy infrastructure like pipelines, and any efforts to curb this right to protect our residents will be fought tooth and nail," Cuomo said.

New York Gov. Andrew Cuomo called the Trump executive order a gross overreach of federal power.
Szybist also questioned to what extent pipeline permitting in Pennsylvania will be affected by the order, given that the state has not experienced some of the same high-profile fights over pipelines as its neighbors that have denied projects under the Clean Water Act. Nevertheless, he said it would be concerning if the order changes the way Pennsylvania's Department of Environmental Protection issues water quality certifications, should it result in less protection.

For years, the gas industry in Pennsylvania has sought to build more pipelines to reach New England, where residents tend to face higher heating prices than the rest of the nation and rely more on fuels like heating oil.

Spigelmyer said some in the region last year used gas supplied by a ship that anchored in Boston Harbor. The gas it carried came from Russia.

"That's not a good thing when you're bolstering your nation's energy supply from out of the country," he said.

As an alternative to transporting gas by pipeline, Trump's order also directs the U.S. Department of Transportation to propose a rule allowing liquefied natural gas to be carried by rail.

For that to happen, gas would need to be cooled until it liquefies, at which point it would be carried on tank cars and delivered to a facility that would heat it again to return to gas form.

Such a form of transportation is legal in Canada, and trains already carry liquefied gas on a limited basis in Alaska and Florida, according to Bloomberg.

"We move oil that way, we move other liquids that way," Spigelmyer said. "It is a safe form of transportation, and it is an alternate form of transportation that also makes sense.

Still, he said, pipelines are the cheapest and most efficient way to move natural gas.

If gas-by-rail becomes a reality, it will likely draw an outcry over the potential for derailments, given that trains have crashed while carrying crude oil from North Dakota. One such derailment that occurred in Canada in 2013 resulted in a fiery explosion that killed 47 people.

"My guess is there would be a huge amount of pushback from communities that would be affected by those kinds of projects," Szybist said, adding that he wondered whether the proposal is meant to prompt states to view pipelines more favorably.

Superfund

E&E News
EPA takes comment on final plan for lengthy Mont. cleanup
https://www.eenews.net/greenwire/stories/1060155663/search?keyword=epa
Friday, April 12, 2019

U.S. environmental officials are taking comments from the public on a proposed final plan for the decadeslong Butte, Mont., Superfund cleanup.

EPA acting Region 8 Administrator Deb Thomas said in a statement yesterday that the plan addresses the remaining soil, waste and water quality concerns and seeks to bring closure to the community.

EPA wants to remove Butte from the nation's Superfund list by 2024.

The public comment period on the plan runs through June 11. EPA also will hold two public meetings in Butte on April 23 and May 23.

Butte was declared a federal Superfund site in 1983 because of the damage done by more than a century of mining and smelting. Butte-Silver Bow officials say more than 600 acres of land has since been remediated and reclaimed.

Insurance Journal
Part of Asbestos Cleanup Site in Montana Removed from Superfund List
https://www.insurancejournal.com/news/west/2019/04/12/523587.htm
Matt Volz
Friday, April 12, 2019

U.S. officials have removed part of a Montana asbestos cleanup site from its Superfund list in the latest sign that the 17-year cleanup is ending, though the asbestos-related health problems for thousands of people remain.

The 45-acre area is five miles north of downtown Libby and is the first of eight units of the Libby Asbestos Superfund site to be taken off the National Priorities List of sites nationwide contaminated by hazardous waste.

Asbestos from a vermiculite mine owned by W.R. Grace polluted Libby and nearby Troy until it was shuttered in 1990. Health officials estimate at least 400 people have died and another 3,000 have been sickened from exposure, and people in the area are still being diagnosed with asbestos-related disease today.

The contaminated material can cause fatal lung diseases and other health issues.

The area has been a Superfund site since 2002. The cleanup had cost $596 million as of July 2017, the most recent figure available, U.S. Environmental Protection Agency spokeswoman Katherine Jenkins said.

Federal officials have been winding up the cleanup, and Wednesday's announcement was a significant step toward its end.

The area being removed from the list was contaminated by a processing plant used to screen mined vermiculite that contained asbestos. The EPA has determined that "no further remediation action is needed to protect human health and environment."

Jenkins said two other Libby Superfund site units also are in the process of being removed from the National Priorities List: the area surrounding another former processing plant and a 400-acre industrial park that used to house a lumber company.

The other units that will remain on the Superfund list include homes and businesses in Libby and Troy, rail and transportation corridors and the former W.R. Grace vermiculite mine itself.

The former mine and the surrounding parts of the Kootenai National Forest are not part of the cleanup, and there is no formal cleanup plan in place.

The cleanup of the residential and commercial properties was completed in October, but must still go through an assessment and comment period that could last a year or longer, Jenkins said.

Once the sites are taken off the Superfund list, state and local agencies will be responsible for handling new asbestos discoveries, from construction or excavation work, for example.

Transportation

CNBC
U.S. EPA to revise proposed freeze of vehicle fuel economy rules
https://www.cnbc.com/2019/04/11/reuters-america-u-s-epa-to-revise-proposed-freeze-of-vehicle-fuel-economy-rules.html
David Shepardson
Thursday, April 11, 2019

WASHINGTON, April 11 (Reuters) - The head of the U.S. Environmental Protection Agency said on Thursday the agency would revise its proposed freeze of vehicle fuel economy standards before unveiling its final regulation in the coming months.

In August, the EPA and National Highway Traffic Safety Administration (NHTSA) proposed freezing requirements for new cars and trucks at 2020 levels through 2026 but EPA Administrator Andrew Wheeler said in an interview at the agency's headquarters "our final regulation is not going to be the same as our proposal."

"We've taken constructive comments, criticisms, concerns from a whole host of different interest groups," Wheeler said. "I hope our final regulation is something that everybody can get behind and support."

Two U.S. officials briefed on the matter said they expected the EPA to wind up requiring a small increase in the yearly fuel efficiency gains, likely around mid-June, but said the precise figure had not been finalized. It is also not clear what flexibilities will remain in the final rule.

Obama-era rules adopted in 2012 called for a fleetwide fuel efficiency average of 46.7 miles per gallon by 2026, with average annual increases of nearly 5 percent, compared with 37 mpg by 2026 under the Trump administrations preferred option.

The administration's proposed changes would also strip California of the ability to impose its own state emissions standards or require a rising number of electric vehicles.

The proposed fuel efficiency freeze would hike U.S. oil consumption by about 500,000 barrels per day by the 2030s, according to administration officials. Wheeler denied the rules were written at the behest of oil industry lobbyists.

"This has nothing to do with the oil industry. We're not doing this for the oil industry. I'm not doing this for the oil industry," Wheeler said.

The Trump administration said in August that the freeze would save automakers more than $300 billion in regulatory costs and reduce the projected cost of a new vehicle by $1,850.

It also said the measure would save lives because Americans would more quickly buy newer safer vehicles, a claim disputed by California and environmental groups.

Automakers like General Motors Co, Ford Motor Co and Toyota Motor Corp oppose a freeze but want requirements reduced to account for changes in oil prices and consumer demand. All have pushed for a compromise deal to head off years of legal uncertainty.

The White House in February ended talks with California to try to reach a deal. Reuters reported in March the White House had held meetings with automakers to push them to back it in its fight with California.

California last week sued the EPA over its failure to provide data used to justify easing vehicle efficiency standards.. California and 16 other states had previously vowed to challenge any emissions rollback.

Wheeler heaped scorn on California. "This is so much more about politics for the state of California than it is protecting the environment," Wheeler said.

California's top air regulator Mary Nichols said in February the proposal flies "in the face of science, logic and any effort to protect public health."

Electrek
EPA head Wheeler says Obama favored EVs over ICE, US can't get to 30% EVs by 2025 so why try?
https://electrek.co/2019/04/12/epa-obama-favored-evs/
Phil Dzikiy
Friday, April 12, 2019

EPA Administrator Andrew Wheeler believes a huge surge in electric vehicle purchases was "the only way" for automakers to comply with fuel economy standards set by the Obama administration, according to a recent interview.

Wheeler discussed a number of topics in a new interview with Reuters, including changes to fuel economy standards and climate change.

When asked if the Obama administration was trying to "disfavor fossil fuels and favor EVs," Wheeler's answer was clear:

"Oh absolutely. The only way you could comply ultimately with Obama numbers is to have 30 percent electric vehicles and that's not what American consumers are buying. Right now we're...2 percent electric vehicles. I don't think this country is going to turn the fleet over to get to 30 percent electric vehicles by 2025. I just don't think that's possible. The automobile companies are paying a record number of fees for non-compliance."

The former coal lobbyist said the EPA is trying to set "realistic" fuel standards, saying there's "only three companies this year that are able to comply with Obama regulations."

A new report claims the EPA and Transportation Department have settled on a plan which require automakers to raise the average fuel economy of their fleets "by about 1 percent annually between 2021 and 2026," a very slight increase instead of the complete freeze that was expected.

Wheeler wouldn't comment on that, but also noted the EPA has "taken comments from a lot of different interest groups into account and we're trying to come up with a final regulation that addresses a majority of concerns." He also expressed hope that California and other states won't sue the federal government over the new standards once they're in place.

The administrator also criticized the former administration's evaluation in terms of fuel standards, calling it a "rush job." Wheeler said,

"They started it November 2016 after the election, they did a 15-day notice in comment and they finalized it before Jan. 20th. You just can't review all the data and inputs in that sort of time and they didn't. They didn't look at the most recent data and information."

Wheeler's EPA is looking to finalize the new standards by "late spring, early summer."

On Climate
Wheeler was also asked a number of questions regarding CO_2 emissions and climate change. Reuters asked him, "CO_2 emissions have gone up by the largest amount in eight years. According to some studies, CO_2 emissions would go up under your proposed ACE (Affordable Clean Energy Rule). This would suggest stronger regulation is needed. What do you define as strong regulation?"

Wheeler's response was lengthy, but mostly danced around the question. He mainly discussed the legal battle with the Clean Power Plan before ultimately ending with, "I believe we are on a course of getting meaningful CO_2 reduction. I think that's the responsible thing for a regulatory agency to do."

Reuters brought up Wheeler's past comments about how "climate change is not the greatest problem facing us right now" – the administrator recently said clean drinking water is a bigger issue. Of the EPA's decisions regarding climate science, Wheeler again had a lengthy response, including:

"I can't just look at the science in a vacuum. We are not a science academy making proclamations about science. We are a regulatory agency. We have to take the science we have developed and apply it to our regulatory constraints that we have and regulatory authorities that we have and move forward. I said before I took this job that I believe in climate change and man has an impact on climate change. But I believe the number one issue facing our planet today is water."

Reuters noted that for Wheeler's policies to be effective, they need more time to be enacted, essentially ensuring that Trump would need to win the 2020 election for the EPA to follow through.

"He's going to," Wheeler said. "I'm looking at a five-and-a-half-year planning horizon at this point. I'm going to have five-and-a-half years to complete everything we are trying to do. And it's why I continue to talk about water and the importance about doing something for water."

Reuters has a full transcript of the interview, which touches on a number of other topics as well.

Electrek's Take
Wheeler didn't outright deny the numbers released in the recent New York Times report involving a 1% annual mpg increase in fuel economy standards from 2021 to 2026, which leads us to believe those estimates are likely close to accurate, if not spot on.

His comment about setting "realistic" fuel economy standards for automakers is unsurprising, but telling. "Realistic" is code for "much easier" and does little to address reducing CO2 emissions in a meaningful way, which seems like a strange concern for the...Environmental Protection Agency.

Wheeler also seems to be establishing another sort of pattern: when it comes to climate change, pivot to talk about clean drinking water. I don't think anyone here is arguing against the importance of clean drinking water. But the two issues are not mutually exclusive. In fact, they're linked.

Green Car Reports
Report: EPA backs off plans to freeze fuel economy rules–slightly
https://www2.greencarreports.com/news/1122588_report-epa-backs-off-plans-to-freeze-fuel-economy-rulesslightly
Eric C. Evarts
Friday, April 12, 2019

EPA Administrator Andrew Wheeler announced Thursday that the agency will delay and revise its plan to freeze emissions and fuel-economy rules, which was expected to be released early this month.

The proposed rule, the Safer Affordable Fuel-Efficient Vehicles Rule, would freeze fuel-economy standards at 2020 levels through 2026 and reverse increases scheduled under President Obama. It also proposed to eliminate the waiver that allows California to set its own stricter emissions standards.

Two government officials briefed on the change told Reuters they expect a new proposal to require a small increase in fuel economy requirements through 2025.

"Our final regulation is not going to be the same as our proposal," Wheeler told Reuters. "We've taken constructive comments, criticisms, concerns from a whole host of different interest groups. I hope our final regulation is something that everybody can get behind and support."

As soon as Trump was elected president, automakers lobbied him to overturn Obama's signature fuel-economy increases, and said they needed a single national fuel economy standard without carve-outs for different states.

The SAFER proposal immediately set the EPA and California at loggerheads, and California, joined by 17 other states, sued the agency over the rollback and said it would continue to require cars sold there to meet the higher standards. Negotiations between Wheeler and California Air Resources Board Chairwoman Mary Nichols broke down in February and Wheeler said in an interview: "This is not a two-way negotiation."

He also said in an interview with Bloomberg in February, that the EPA's role was not "to promote a particular type of fuel, such as electricity.

"This is so much more about politics for the state of California than it is protecting the environment," Wheeler said, referring to California's emissions standards and zero-emissions vehicle policy.

Since the SAFER proposal was released, automakers have lobbied the EPA to keep standards unified and certain, rather than break off from California and tie them up in lawsuits for years that could end up at the Supreme Court.

Water

Cherokee One Feather
Tribe's Water Quality Standards approved by EPA
https://theonefeather.com/2019/04/tribes-water-quality-standards-approved-by-epa/
Scott McKie
Friday, April 12, 2019

The Eastern Band of Cherokee Indians (EBCI) submitted its finalized Water Quality Standards (WQS) to the Environmental Protection Agency (EPA) in November 2018, and the agency approved them on Wednesday, April 10, 2019. The Tribe becomes the 45th federally recognized tribe in the country to have federally-approved Water Quality Standards.

"Having the EPA approve the Tribe's WQS is a critically important step in protecting mostly pristine tribal natural resources and is an excellent example of the federal government fulfilling the trust responsibility to sovereign tribal nations," said Michael Bolt, EBCI Water Quality Section supervisor.

EPA Acting Region 4 Administrator Mary S. Walker said in a statement, "The Eastern Band of Cherokee Indians has demonstrated strong stewardship for its land and resources. Approval of the water quality standards will go far to ensure critical tribal surface waters are protected."

Principal Chief Richard G. Sneed said, "I appreciate all the hard work done by our program staff. They are highly certified to do what they're responsible for and I have full faith in the work they do for the EBCI."

The 36-page WQS document for the Tribe begins with an introduction that states, "The Eastern Band of Cherokee Indians recognizes tribal waters are the source of life, tranquility, and prosperity. Tribal waters include, but are not limited to, streams, rivers, natural springs, and wetlands that support a diverse array of environmental, cultural, and economic values. The Tribe recognizes that protecting these waters requires a strategic and integrated approach across all tribal watersheds to encourage prudent use of the Tribe's water resources and enhance its quality and productivity."

The WQS document also states, "The Water Quality Code states that the DANR (Department of Natural Resources) is responsible for establishing water quality standards to facilitate the following management goals:

1. restore, maintain, and enhance the water quality for all beneficial uses of tribal waterbodies;
2. protect human health, social welfare, aquatic life, wildlife, and the economic well-being of the Eastern Band of Cherokee Indians;

3. ensure that no contaminants are discharged into Cherokee waters from either point sources or non-point sources without being given the degree of treatment or control necessary to prevent pollution;
4. establish numeric and narrative standards that provide a legal basis for water pollution control; and
5. encourage prudent use of the Tribe's water resources and enhance its quality and productivity as stated in the goals of the Cherokee Legacy Plan."
6.

Bolt told the One Feather in November when the finalized standards were presented to the EPA, "Water is the essence of life, and it's so important in the tribal culture and it's got to be one of the highest priorities for us to keep it in good shape."

He added, "These are not just proud words on a dusty shelf. These are real, live standards that we can use. They're a tool in a toolbox. We look forward to seeing this come to fruition...we have a unique place in this universe, and we're at the headwaters of these beautiful streams. Everyone else will benefit from us being able to protect them. Our neighbors in North Carolina will be thankful that we'll be able to protect them."

Popular Science
Learn how changes to the Clean Water Act could hurt your region before it's too late
https://www.popsci.com/new-clean-water-act-changes
Kaitlin Sullivan
Friday, April 12, 2019

The Environmental Protection Agency has made moves to shrink national water protections for two years. In July 2017, the EPA and Army Corps formally proposed rescinding the Clean Water Rule; a proposal that has not yet been finalized. Then in February 2018, the agencies suspended the Clean Water Rule until February 2020. Now, it's go time: The administration is proposing revisions to the Clean Water Act, introduced in 1972 as a way to curb widespread pollution in United States waterways. The would-be replacement is rife with rollbacks that would affect every American. Lawmakers, scientists, and the general public have until April 15 to submit comments on the proposed changes, so we've compiled a list of threatened waterways in each region to help inform your feedback. Scroll through and find the Environmental Protection Agency Region to which your state belongs. But first, some background:

What is the Clean Water Act?
The Clean Water Act requires anyone who wishes to conduct business that could pollute waters of the United States (WOTUS) to first apply for a permit. A 2015 addition to the act, called the Clean Water Rule, expanded this red tape to some temporary (meaning they don't flow year-round) and isolated (meaning they aren't visibly connected to another body) waterways. The Trump Administration has already suspended the Clean Water Rule and wants to permanently kill it, as well as some protections that were in place before 2015. They can do this by redefining what counts as "waters of the United States."

This definition determines which waterways the federal government regulates under the Clean Water Act. Suspending the Clean Water Rule would make it easier for industries and cities to pollute small or visually isolated water bodies. For example, under the new rule, you still could not dump toxic waste into the Mississippi River. But you could dump it in some smaller streams or wetlands, even if they provided crucial habitats to certain animals or could indirectly contaminate sources of drinking water.

Proponents of the new definition say the Clean Water Rule is the product of government overreach, that it hurts the economy, and that the new regulations would simply clarify which waters are and are not included. Opponents say removing these baseline protections would have consequences and would undermine the 1,200 science studies that informed the Clean Water Rule. "In providing this clarity from the onset, it removes Washington bureaucrats from making ambiguous decisions on land which they aren't familiar with, as landowners are," the EPA's website claims.

But without the baseline protections the new definition cuts out, it will be nearly impossible to keep interstate waters clean; every state has different local regulations. Local waters in states that adhere to federal government standards and

nothing more would be hit the hardest, but that pollution would spread downstream, across state lines, and into larger rivers, estuaries, and lakes.

On a national scale, the proposed changes to the Clean Water Act would lift federal protection for sources of drinking water for 117 million—or one in three—people living in the lower 48. It could exclude as much as 70 percent of rivers and streams and at least half of the nation's wetlands. Aside from being critical habitat for plants and animals, including one-third of bird species in the United States, wetlands help mitigate floods by absorbing excess water instead of letting it run off into overflowing streams. They recharge groundwater reserves and filter pollutants such as nitrogen and phosphorus that cause toxic algae blooms.

Polluted waterways are not an environmental issue of the future; they pose an immediate danger that we have the ability to prevent. Before you keep reading, here are some terms you'll want to know along the way:

Navigable waterway: Think of these as the larger bodies of water you're probably most familiar with. The definition relies heavily on how valuable the river is for commerce, but it's also based on size. Many have their own standards outside the Clean Water Act, and the administration agrees we need to protect these. But because small waterways funnel into navigable waters, and wetlands filter pollutants such as nitrogen so that they don't end up in them, the protected waterways will still be affected by proposed rollbacks.

Headwaters: These small streams are where larger rivers get their start. Headwaters account for more than half of all stream miles in the United States and provide the majority of flow into large rivers.

Ephemeral streams: These temporary streams flow only after it rains, and run dry for a lot of the year. None of these would be federally protected under the new Clean Water Act, but they can be crucial to our well-being and that of our ecosystem.

Intermittent streams: These seasonal streams usually carry melted snow or runoff from other streams, wetlands, or surface water from cities. They don't flow year-round, either drying up when water gets scarce or flowing unseen beneath the ground. Under the proposed change, intermittent streams would be evaluated on a case by case basis, based on 30-year flow averages. Some worry that these numbers could be skewed in favor of industry.

Perennial stream/river: These are typically fed by headwater and ephemeral streams or lakes and flow year-round. They're usually larger tributaries to navigable waters—or considered navigable themselves—and for the most part, would still be federally protected.

Significant nexus: Defined in the Clean Water Rule as being connected to a navigable waterway, even if humans can't see it.

Adjacent waters: The Clean Water Rule identified adjacent waters as bodies near navigable water that have a significant nexus, even if we can't see it. This is important because small, unseen connections can enable contamination from an unprotected waterway to flow into a protected one. The rule also said that water within a certain distance from a navigable waterway was protected, which the original Clean Water Act did not do.

Surface water connection: Water that flows above ground from one body of water to another. This is how the new rule will determine whether a waterway has a significant nexus—or connection—to a navigable waterway. This is problematic because many waterways are connected through underground channels.

Region 1
EPA Region 1
Includes: Connecticut, Rhode Island, New Hampshire, Maine, Massachusetts, and Vermont.

Connecticut, Rhode Island, New Hampshire, Maine, Massachusetts, Vermont: Strong state regulations that rely on federal funding

New England's waterways have plenty to contend with; the region struggles with chemicals, sewage runoff, and phosphorus that make their way into rivers, estuaries, and the Atlantic Ocean. In the Connecticut River, trout are further threatened by dams that block sediment and rocks from collecting downstream, where they would naturally form inlets in which the fish could spawn. But even in the absence of the Clean Water Rule, the region's strong state-level protections would provide a fairly sturdy shield against unchecked pollution and development, though state laws can change.

What is at stake is the federal funding these states need to pay for water-quality monitoring and permitting efforts. "The Clean Water Act has always been about cooperative federalism, which means the state and federal governments cooperate to implement these laws," explains Andy Fisk, executive director of the Connecticut River Conservancy.

Each state can apply for federal funding to put toward clean-water projects. Since 2015, the EPA has contributed around $12.7 million annually to projects in Region 1 states through Section 106 grants alone. Last year, the agency awarded Massachusetts more than $80 million in Clean Water and Drinking Water State Revolving Fund grants to upgrade sewage-treatment and drinking-water systems. (You may also recall Massachusetts Attorney General Maura Healey's involvement in a 2018 lawsuit against the Army Corps of Engineers that accused the federal agency of illegally delaying clean-water protections.)

It's unclear how the proposed changes alone would influence this backing. The Trump Administration's 2018 budget did increase EPA funding by roughly 9 percent more than what was allocated in 2017. But the administration's 2020 proposal will slash the agency's budget by more than 30 percent. With fewer dollars to go around, state-level clean-water projects that go beyond baseline federal regulations could take a hit.

Let the EPA know that states can't protect WOTUS on their own.

Region 2
EPA Region 2
Includes: New York and New Jersey.

New York: Resurrecting the Buffalo River
Over the past three decades, state and federal officials have pulled more than 200 million gallons of toxic sediment laced with lead, mercury, and PCBs from the Buffalo River. They've spent more than $100 million on the ongoing project so far. The restoration didn't begin until nearly 20 years after the U.S. Department of the Interior declared the river biologically dead in the late 1960s. At the time, its waters ran thick with sewage, nitrogen, and around 100 different chemicals that factories, cities, and farmers poured directly into its flow.

The Clean Water Act made such dumping illegal, providing a kind of life support for the Buffalo until environmental groups made big moves toward cleanup. Still, progress has been slow and fragile. Turtles, bass, and perch have all returned to the waterway, but their habitat remains critically impaired: Its tainted waters still cause tumors, deformities, and reproductive problems in the region's animals, signaling the water is not yet clean enough for beaches. And like a person who just recovered from being sick, the river's immune system is vulnerable, so even small amounts of contaminants could topple its ecosystems.

More than one-third of the Buffalo's 312 miles of tributaries would lose federal protection under the Trump administration's proposed changes to the Clean Water Rule. This would make it easier for industrial-sized livestock farms and construction sites to leak hazardous chemicals and oxygen-depleting nitrates into the recuperating river, undoing more than 30 years of restoration. The river empties into Lake Erie, where manure and fertilizer runoff have sparked massive algae blooms since the early aughts.

Let the EPA know about all the work that could be undone.

New Jersey: Reckoning with legacy pollution

New Jersey is the most densely populated state in the nation, and nearly half of its residents get their water from temporary streams protected by the Clean Water Rule. Luckily, New Jersey state law is more stringent than federal regulations, even under the Clean Water Rule, so they'll stay that way even if it's repealed. Regardless, these waters need attention; New Jersey waterways are already highly polluted.

EPA-designated Superfund sites rank as some of the most polluted places in the country: land or water so full of hazardous waste, that they pose a serious risk to human health. New Jersey has more of them than any other state. For decades, local industry used the lower section of the Hackensack River, which extends 22 miles from Newark Bay to the Oradell Reservoir, as a dumping ground for everything from arsenic and mercury to chemicals used in pharmaceutical manufacturing. The original Clean Water Act of 1972 did curb pollution dumped directly into the river, but many of the old contaminants remain.

Those chemicals are mostly in sediment on the Hackensack's riverbed. Because this sediment leeches chemicals into streamflow, many the river's tributaries are now priority Superfund sites, which means the EPA will bankroll their cleanup first. One, Berry's Creek, is considered the worst methylmercury site in the world. The stream crosses 750 acres of marshes; the EPA will have to spend $332 million before it's healthy enough to lose its Superfund designation. Although pollution has cleared enough to allow the lower Hackensack River to once again support fish such as the Atlantic striped bass, the seafood is still too toxic to eat. In other states, where local government defaults to federal regulations, the Clean Water Rule can prevent small streams such as Berry's Creek from ever getting so polluted in the first place.

Tell the EPA New Jersey's cautionary tale.

Region 3
EPA Region 3
Maryland, Delaware, Virginia, West Virginia, Pennsylvania, and Washington D.C.

Maryland, Delaware, and Virginia: Ultimate protection for all Delmarva potholes
2015's Clean Water Rule specifically protected more than 34,000 acres of wetland in the Chesapeake Bay watershed. Roughly the size of Washington, D.C., the pocked Delmarva pothole region comprises nearly 5,000 inland marshes on their namesake Delmarva Peninsula, which includes parts of Delaware, Maryland, and Virginia (Del-Mar-Va, get it?). The natural potholes there provide little pockets for temporary wetlands to flourish in during wet seasons. Underground flows connect the wetlands to nearby streams, but since there aren't any aboveground connections, they're technically considered isolated. That means the new Clean Water Act would not protect them.

Layers of soil and roots in the forested wetlands act as a filter. They keep nitrogen and phosphorus runoff from reaching the Chesapeake Bay, where elevated levels forge algae blooms and suffocate fish. Like all wetlands, the peninsula potholes provide safe haven for birds, salamanders, and frogs. (Further reading: Both WYPR FM and American University's radio station WAMU get into the details of what makes this ecosystem extra important, and how much of it we've already lost.)

Some good news: Maryland, Delaware, and Virginia are all among 22 states (plus Washington, D.C.) that overturned the Trump Administration's suspension of the Clean Water Rule last year. The reinstated Rule protects streams that don't flow constantly as well as the Delmarva potholes, so they're safe for now. But that might not last.

Although the wetlands connect across state lines, local law will govern their protection. Virginia is one of 13 states that prohibit state-level wetland regulation from superseding federal rules. This means that although Virginia has chosen to abide by the Clean Water Rule until the EPA makes its final decision, once revisions to the Clean Water Act are set, Virginia state law cannot protect any wetland that is not an identified WOTUS under federal law. (Further reading: The Virginia Mercury reported on the rivers—many of which feed the Chesapeake Bay—that will lose their federal guard if the definition of WOTUS is edited.)

Tell Mr. Wheeler to protect connected wetlands across state lines.

West Virginia and Pennsylvania: Backing protections along the Ohio River
More than 25 million people live in the Ohio River watershed; that's nearly 10 percent of the nation's population. The river courses through roughly 1,000 miles of terrain in Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, and Illinois before joining the Mississippi as its largest tributary. During this journey, the Ohio sweeps up dangerous chemical byproducts from factories, wastewater from crops and mining sites, and mercury from coal plants that puff the neurotoxin into the air before it eventually settles on water and land; other times, mercury winds up in wastewater discharge. Together, these contaminants make the Ohio River the most polluted waterway in the country, but this is nothing new.

The river was so widely used for sewage discharge and coal transportation in the early 20th century that officials from eight states formed the Ohio River Valley Water Sanitation Commission (ORSANCO) more than two decades before Congress introduced the Clean Water Act. Since 1948, the commission has set pollution standards that apply to the entire length of the Ohio River, rather than allowing states to individually regulate sections. Now committee members want to determine whether or not some of their rules are duplicates of the Clean Water Act, and should therefore be cut. If ORSANCO oversight changes before federal regulations, it could punch holes in contamination control within a rivershed already rife with problems.

Nitrogen runoff from industrialized wheat, livestock, and corn operations feeds a poisonous algae called Microcystis, which has choked as much as two-thirds of the riverway in recent years. This is an example of nonpoint-source pollution, meaning it isn't piped directly into the river, but rather trickles in sporadically. Flooded grasslands in the basin capture chemicals, bacteria, mining fluid, and fertilizer so they never reach the river, but developers can drain and build on top of some of them without a permit under the proposed rule changes. As a result, the wetlands would no longer be around to trap nonpoint-source pollutants.

The region's fossil-fuel industry presents additional challenges. The Marcellus and Utica Shale deposits that sandwich the Ohio River from Pittsburgh to the Ohio-West Virginia border provide huge amounts of natural gas. Madeline Fleisher, a senior attorney with the Environmental Law & Policy Center in Columbus, Ohio says that while coal excavation is dwindling in the area, fracking is coming in as a replacement. This method of natural-gas extraction involves blasting water, sand, and a cocktail of chemicals into miles-long boreholes through shale rock. Fracking can contaminate drinking water in all sorts of ways, such as toxic waste slowly seeping into groundwater and dramatic chemical, oil, and natural-gas spills in river tributaries. A spill or leak in the Ohio River watershed could seriously impact drinking water for cities like Evansville, Indiana, which has just one treatment plant to process river water.

Tell the EPA how it can help.

Washington, D.C.: Keeping the Potomac on the up and up
The Potomac River has come a long way since former President Lyndon B. Johnson called it a national disgrace in 1965. The river, overrun with algae and garbage for decades, now supplies 90 percent of Washington's drinking water. Upstream pollutants from tributaries in West Virginia, Virginia, Pennsylvania, and Maryland have subsided so much that the conservation group American Rivers just gave the Potomac its best rating since they started testing water quality in 2007. But there's still work to do.

Underwater grasses (which provide a habitat for fish) and water quality have both been slow to recover. The river still has a huge problem with nitrates, phosphorous, and sediment runoff, which the Potomac eventually deposits into the Chesapeake Bay, the country's largest estuary. It's here that fresh water from more than 100,000 streams, creeks, and rivers mixes with salty tides from the Atlantic Ocean. The delicate balance of this blend is a haven for wildlife—the bay houses 2,700 species—as well as an important pillar of the economy. Commercial fishermen pull 500 million pounds of seafood from the Chesapeake Bay every year.

Keeping systems that filter out the Potomac's biggest polluters intact is the only way to help it get truly clean again. Sixty percent of the river's nearly 15,000-square-mile watershed is woodland, so preventing deforestation in the area is key, and the number of trees being planted along vulnerable streams has declined in recent years. Trees provide important

habitat for birds, including bald eagles, and filter out the chemicals and nutrients that clog both the river and the Chesapeake Bay. Wetlands in the Potomac River watershed are especially crucial; marshes filter pollutants from runoff and capture sediment, keeping it out of flowing water. If the Trump Administration cuts protections that guard wetlands, temporary streams, and watershed woodlands against development, the Potomac, and ultimately the Chesapeake Bay, will suffer.

Tell the EPA to protect D.C.'s drinking water.

Region 4
EPA Region 4
Includes: Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Tennessee, and Mississippi.

Alabama: Aquatic biodiversity in ephemeral streams
Alabama ranks third in the nation for number of endangered species. Many of them are aquatic, which is why the state's waterways rank number one when it comes to vulnerable species of mussels, snails, crayfish, turtles, and freshwater fish. Ephemeral streams, which don't always flow and would, therefore, lose protection under the revised Clean Water Act, play a huge role in supporting these at-risk creatures.

Like elsewhere in Appalachia, ephemeral streams in Alabama get filled in by mountaintop mining and choked with coal ash. They're also plagued by poultry. According to industry data self-reported to the Environmental Protection Agency in 2015, two chicken processing plants in the Black Warrior River basin released more than 1.2 million pounds of toxins—mostly nitrate—into waterways connected to the river. Excess nitrates in aquatic ecosystems create a domino effect that lowers oxygen levels so much it's hard for fish to survive. It can also cause a disease in humans called methemoglobinemia, where blood cannot release oxygen into muscles and organs.

Meanwhile, steam power plants in Walker and Greene County, also in the Black Warrior watershed, ranked among the top 10 sources of waterborne cancer-causing toxins and those linked to developmental disorders. These chemicals aren't good for people, and most certainly aren't good for creatures that spend their entire lives swimming among them. The more water in a watershed, the more power it has to dilute pollutants and mitigate the risk they pose, but climate change is making Alabama hotter and drier. In 2016, more than 98 percent of Alabama suffered drought conditions, fueling a year of wildfires that torched every county in the state.

Let Andrew Wheeler know that you and the fish would like clean water.

North Carolina: Coal, PFAS, and development along Haw River tributaries
A network of 1,700 square miles of feeder streams and wetlands throughout north-central North Carolina empty into the Haw River. The watershed is developing at one of the fastest rates in the state, allowing cities like Chapel Hill, Durham, and Greensboro to sprawl. That means it's also uniquely plagued by runoff from housing construction sites in addition to industrial pollution.

Factories in Alamance County—home to Haw River feeder streams—produce compounds called perfluoroalkyl and polyfluoroalkyl substances, or PFAS. They're used in everything from furniture to military-grade firefighting foam and contaminate drinking water across the country. At a March hearing, Alabama Rep. Brian Fitzpatrick, co-chairman of the congressional PFAS task force, said the compound is "one of the most widespread public health crises" that the U.S. faces. It will cost $2 billion to filter PFAS from the water surrounding military sites alone. While the EPA limits more than 90 different contaminants in drinking water, including parasites like Giardia and chemicals like asbestos, chemical manufacturers are creating new PFAS compounds so quickly that the EPA can't keep up with the research required to set advisable limits for their presence.

Troubling amounts of PFAS have made their way from feeder streams to the mainstream in North Carolina, showing up in the Haw River. The EPA has issued a health advisory for two types of PFAS compounds produced in Alamance County, limiting the amount considered safe in drinking water. But hundreds more will remain unregulated for years. Changes to the Clean Water Act would allow factories to dump waste into small waterways without the limitations and permit

requirements imposed by the Clean Water Rule. Meanwhile, North Carolina's population boom means more people could be exposed to contaminated drinking water without knowing it.

Let the EPA know about all the industrial chemicals you don't want to drink.

South Carolina: Urban development in the Piedmont ecoregion
The ephemeral wetlands of the Piedmont ecoregion span six southern states, including northwestern South Carolina. A 2016 United States Geological Survey simulation projected urban sprawl (based on projected city expansion) in the Southeastern U.S. would fragment wetland landscapes, and that the Piedmont ecoregion would likely support the most urban expansion.

In South Carolina, the U.S. Forest Service manages huge swaths of the Piedmont, including the Sumter National Forest and Long Cane, and the Enoree Ranger Districts. However, public land within the national forest boundaries is fragmented. Because of this, most of the land in the Piedmont is privately owned. Development in the region predominantly impacts small headwater streams and wetlands that become inundated with sediment and heavy metals from urban-stormwater runoff and construction sites.

The wetlands that cover roughly one-quarter of South Carolina also take a massive hit. During heavy rains, wetlands can retain water like a sponge, allowing the deluge to slowly seep into the ground where it's stored in an aquifer. These areas also trap impurities like nitrogen and phosphorus that cause problems downstream. When wetlands are paved, they can't trap rain or pollution, so neighborhoods flood and chemicals wash directly into streams and rivers. Wetlands also provide a habitat for birds and other critical wildlife, and South Carolina could lose as much as 70 percent of them under the new Clean Water Act.

Ask Andrew Wheeler to minimize heavy metals and feces in your watershed.

Florida: Strict state oversight
Coastal and freshwater wetlands cover a higher percentage of Florida than any other state in the Lower 48. So it's good to hear that Florida's Environmental Resource Permit Program imposes state-level regulations on surface flow alteration, requiring permits for everything from stormwater drainage to installing a dock. The program also regulates isolated wetlands that aren't hydrologically connected to other waterways, which are not regulated at the federal level—even under the 2015 Clean Water Rule. But if the EPA oversees fewer bodies of water, states will have to work harder to protect them.

Matt Cohen, a hydrologist at the University of Florida, says states that implement their own, stricter regulations could decide they're too much trouble to enforce and default to EPA direction. This would loosen state-level draining, development, and dumping restrictions in wetlands that are not connected to navigable waterways year-round. Many of these areas are connected through underground hydrology or aboveground streams that flow only after heavy rain. That means that even though these areas could lose federal protection, they're still capable of carrying pollutants into major waterways. When developers pave these wetlands to make way for neighborhoods, or when farmers drain them, they can no longer prevent flooding, filter pollutants like nitrogen, or support the birds and amphibians that rely on them.

Tell the EPA to keep Florida's wetlands protected.

Georgia: Urban sprawl around Lake Lanier's intermittent streams
Georgia has 7.7 million acres of wetlands, covering an area roughly the size of Maryland. These ecosystems stand to lose federal protection under the proposed changes to the Clean Water Act, and since most people in Georgia drink surface water, increased pollution in these waterways would directly affect humans.

The new parameters of the law put drinking water for 3.5 million people in the metro Atlanta area at risk. Lake Lanier provides potable H20 for more than one million people in the capital region. The area around the lake is developing at one of the fastest rates in the state, meaning more treated sewage, fertilizer, and heavy metals flow into the hundreds of intermittent streams that feed Lake Lanier. Intermittent streams, which usually cease their flow for part of the year,

are not protected under proposed changes. The stricter Clean Water Rule does not make urban expansion impossible, but requires companies to invest in infrastructure that keep pollutants contained, treated, and out of waterways.

Kentucky: Energy industry waste and strained infrastructure

Although coal mining is on the decline in eastern Kentucky, the industry is far from gone and has left behind a legacy of corrosive waste. The Lexington Herald Leader recently published a multipart investigation into contaminated drinking water in eastern Kentucky, where mining waste pollutes both groundwater and surface water, a public health crisis that is exasperated by aging pipes. Because most town economies in eastern Kentucky relied on the coal industry, there's little money to fix infrastructure. In the absence of coal jobs, people are moving away, leaving fewer customers to support local water companies. Those who remain often cannot afford higher water bills. Holding mining and utility companies financially responsible for contamination could help pay for cleanup and repairs.

This is playing out in federal court. The public interest law organization Earthjustice filed a lawsuit against Kentucky Utility, which owns the E.W. Brown power plant that allegedly polluted Herrington Lake—a navigable water that is protected even under the proposed changes—through groundwater. Now it's up to the federal government to define what kinds of pollution they can legally trace back to a particular source, and whether companies that taint groundwater with a direct connection to a protected waterway should be held liable for illegally contaminating federally protected water. Loosened regulations at large would make it harder for nuanced cases like this to hold industrial polluters accountable.

Tell the EPA to protect eastern Kentucky's drinking water.

Tennessee: 2,500 vernal pools in the Cumberland Plateau

Vernal pools are intermittent, meaning they're only filled with water for part of the year. The depressions in what is otherwise a grassy or wooded landscape fill with rainwater in the spring, and they're hotbeds for biodiversity. In 2015 the Clean Water Rule expanded federal protections to these unique wetland features, a direct result of a series of scientific studies that outlined their irreplaceable functions.

Vernal pools are crucial habitats for species like salamanders and tree frogs that utilize the temporary pockets of water as safe breeding grounds. Because the pools are dry part of the year, they don't support fish or bullfrogs—natural predators that would eat larvae that begin their lifecycle in the tiny pondlike features. That's why certain species that thrive in vernal pools cannot survive in permanent bodies of water. (Further reading: The Times Free Press has a more in-depth explanation on why the pools are crucial for critters.)

Under the proposed changes to the Clean Water Act, developers could legally clear the forests that support vernal pools on the Cumberland Plateau. Researchers have directly linked such deforestation to loss of biodiversity in the area, and parts of the wetlands themselves could fill in entirely.

Make sure the EPA knows you care about protecting America's biodiversity.

Mississippi: Pearl River Tributaries

The Pearl River and its tributaries are already tasked with filtering Mississippi's waste. The proposed changes to the Clean Water Act would remove regulations that monitor the amount of sewage, nitrates, and industrial chemical pollution companies can release into the small ephemeral streams (which generally only flow after heavy rainfall) that feed the larger river. It would also make it easier for untreated waste to flow downstream.

Ninety-eight industries, businesses, and municipalities already legally discharge wastewater into the Pearl River and its tributaries. Twenty sewage plants depend on the Pearl River to dilute their wastewater; a combined 92 million gallons pour into the river daily from Jackson, West Rankin, Picayune, Poplarville and Columbia alone. A proposed dam in the Rankin Hinds Pearl River Flood and Drainage Control District would restrict flow to the lower Pearl River, meaning there would be even less water to dilute downstream pollutants.

The Pearl River's fresh water also balances the salinity of coastal marshes, including the western Mississippi Sound. According to the Army Corps of Engineers, roughly 97 percent of the commercially harvested oysters in Mississippi come from reefs in the Sound, so the industry stands to lose if water from ephemeral streams is polluted, or if construction projects sever them from flowing into the river at all.

Tell the EPA to protect Mississippi's oyster industry and keep sewage at bay.

Region 5
EPA region 5
Includes: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Minnesota: Copper and nickel mining in Superior National Forest
Forget the license plate stat—Minnesota has almost 12,000 lakes, including Lake Superior, which has a larger surface area than any other freshwater lake in the world, and Lake Itasca, the source of the Mississippi River. Water fuels recreation, industry, and pride for Minnesotans, but 40 percent of the state's rivers and lakes are listed as impaired, meaning they don't meet basic quality standards for bacteria or nutrient content.

Minnesota's wetlands are in trouble too. Just under 11 million acres of marshland remain in the state, which once supported nearly 19 million. Wetlands trap the agricultural runoff that threatens drinking water in a state where 54 percent of the terrain is farmland.

While nitrogen is less of a concern along the state's Mesabi Iron Range, the heavily industrialized area spews methane, lead, and acid. Minnesota mines account for 75 percent of U.S. iron-ore production. Over the past 30 years, all of it has been scraped, blasted, and drilled from the Mesabi. Hardrock mining is the single largest source of toxic waste in the country. Water-rich areas like Minnesota create more opportunities for mining waste to make its way into fisheries, wetlands, and faucets. But recently, this hasn't been reason enough to convince state officials to shift away from mineral extraction.

Superior National Forest, a cluster of boreal woodland that covers the Mesabi Iron Range, boasts nearly 2,000 lakes and 1,300 miles of major streams that support cold-water fisheries. It also houses one of the largest undeveloped copper and nickel deposits in the world, and two companies are getting closer to tapping it. Excavation would simultaneously create jobs and put both the Lake Superior watershed and Boundary Waters Canoe Area Wilderness (BWCA) at risk. Copper-nickel mining produces acidic sulfide waste when exposed to air. Acid-mining waste is so corrosive to the surrounding environment that the EPA says extraction "should be avoided." Or it used to say that, anyway.

In 2017, the Trump Administration overturned an Obama-era moratorium that temporarily halted new mines in the area. This meant game-on for mining companies. In March, the Army Corps of Engineers greenlighted PolyMet Mining Corporation's NorthMet project slated for an area in the St. Louis River watershed where part of the land was previously an iron-ore processing plant. Meanwhile, Twin Metals Minnesota, a subsidiary of a Chilean mining giant, wants permission to construct an underground mine on untouched land along the South Kawishiwi River, at the edge of the BWCA.

The river itself would remain protected under the new Clean Water Act, but many of the ephemeral streams and wetlands surrounding it would not, meaning a spill could easily trickle into the more than 1,000 lakes and streams of the BWCA.

More water, more reasons to file a comment.

Michigan and Wisconsin: Helping northern peatlands capture air pollution
When it comes to fighting climate change, northern peatlands punch well above their weight. Most of these bogs formed when ancient lakes filled up with dead plant matter like leaves to make nutrient-dense marshes. Submerged

conditions didn't provide enough oxygen for organic matter to decay, leaving behind pieces of dead plants mixed with infertile soil. Presto: peatland.

These bogs cover stretches of Michigan's Upper Peninsula, Wisconsin, Alaska, and Minnesota, and are technically a type of wetland. Their peatiness gives them carbon-trapping power: A study of one Great Lakes region swath revealed that although they covered just 13 percent of the land, peatlands accounted for half of all carbon storage in the area, which also included forest. But it's difficult to determine just how much peatland covers Earth's surface. Thanks to satellite and thermal imagery, scientists have a better idea of how many wetlands contain peat, but not the amount each bog holds––those numbers are still largely based on estimates. That's because the depth of organic matter varies throughout a single system, so taking measurements is extremely time-consuming.

But we do know that peatlands are great at pulling carbon from the air and storing it in the ground, where it doesn't contribute to climate change. And while some of these ecosystems are clearly connected to bodies of water like the Great Lakes, many connections remain unclear and are hard to study. If scientists can't find a surface connection linking a peatland to flowing water, it's considered an isolated wetland, and therefore unprotected, under the new definition of WOTUS.

Tell the EPA to protect carbon sinks.

Ohio, Illinois, Indiana: Losing oversight in the Ohio River
More than 25 million people live in the Ohio River watershed; that's nearly 10 percent of the nation's population. The river courses through roughly 1,000 miles of terrain in Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, and Illinois before joining the Mississippi as its largest tributary. During this journey, the Ohio sweeps up dangerous chemical byproducts from factories, wastewater from crops and mining sites, and mercury from coal plants that puff the neurotoxin into the air before it eventually settles on water and land; other times, mercury winds up in wastewater discharge. Together, these contaminants make the Ohio River the most polluted waterway in the country, but this is nothing new.

The river was so widely used for sewage discharge and coal transportation in the early 20th century that officials from eight states formed the Ohio River Valley Water Sanitation Commission (ORSANCO) more than two decades before Congress introduced the Clean Water Act. Since 1948, the commission has set pollution standards that apply to the entire length of the Ohio River, rather than allowing states to individually regulate sections. Now, committee members want to determine whether or not some of their rules are duplicates of the Clean Water Act, and should therefore be cut. If ORSANCO oversight changes before federal regulations, it could punch holes in contamination control within a rivershed already rife with problems.

Nitrogen runoff from industrialized wheat, livestock, and corn operations feeds a poisonous algae called Microcystis, which has choked as much as two-thirds of the riverway in recent years. This is an example of nonpoint source pollution, meaning it isn't piped directly into the river, but rather trickles in sporadically. Flooded grasslands in the basin capture chemicals, bacteria, mining fluid, and fertilizer so they never reach the river, but developers can drain and build on top of some of them without a permit under the proposed rule changes. As a result, the wetlands would no longer be around to trap nonpoint source pollutants.

The region's fossil fuel industry presents additional challenges. The Marcellus and Utica shale deposits that sandwich the Ohio River from Pittsburgh to the Ohio-West Virginia border provide huge amounts of natural gas. Madeline Fleisher, a Senior Attorney with the Environmental Law & Policy Center in Columbus, Ohio says that while coal excavation is dwindling in the area, fracking is coming in as a replacement. This method of natural gas extraction involves blasting water, sand, and a cocktail of chemicals into miles-long boreholes through shale rock. Fracking can contaminate drinking water in all sorts of ways, from toxic waste slowly seeping into groundwater to dramatic chemical, oil, and natural gas spills in river tributaries. A spill or leak in the Ohio River watershed could seriously impact drinking water for cities like Evansville, Indiana, which has just one treatment plant to process river water.

Tell the EPA how it can help.

Region 6
EPA Region 6
Includes: New Mexico, Texas, Oklahoma, Arkansas, and Louisiana

New Mexico: Even big tributaries are temporary
About 90 percent of New Mexico's streams (even the big ones) are ephemeral or intermittent, meaning they don't always flow. The Rio Puerco, Rio Galisteo, and the Rio Salado are all major tributaries of the Rio Grande, and only flow for part of the year. They'll either lose protection under proposed Clean Water Act changes or be subject to case-by-case evaluation. And they're already at risk: New Mexico is the only state in the nation that's experiencing extreme drought, according to the U.S. Drought Monitor.

It's a safe bet that deregulation will affect every waterway in New Mexico, but the Pecos River Basin is one particularly glaring example. The basin sits right where the Great Plains meet the Chihuahuan Desert near Santa Fe, and extends south into one of the most arid regions in Texas. According to Earthjustice, as many as 91 percent of streams and 62 percent of wetland in the Pecos River Basin will lack protection under the new rule. As the Southwest becomes hotter and drier, more streams in the region will only flow after heavy rain, making them ephemeral and therefore not subject to federal standards under the proposed changes. (Further reading: The New Mexico Political Reporter has documented other temporary streams in New Mexico that stand to lose protection under the new legislation.)

Almost all of New Mexico's water could lose federal protection, tell the EPA.

Texas: Confusion in Galveston County's Coastal Prairie Pothole Wetlands
Prairie pothole wetlands are found throughout Texas. The grassland depressions retain rainwater, which slowly seeps into the ground. The grassy wetlands serve to store surface water, recharge groundwater, and prevent flooding. When they overflow, their water pours into other wetlands, and then into a tributary that feeds Galveston Bay, a navigable waterway.

Texas prairie pothole complexes have their own provision under the 2015 Clean Water Rule, designating them as essential wetlands that deserve federal protection; the systems are connected to downstream waters through underground channels, even when they appear isolated on the surface. But representatives of the oil industry, developers, and manufacturers immediately contested that 2015 definition.

Some argue that the wetlands are, in fact, isolated, because they lack visible connections to the navigable waters protected by the EPA and U.S. Army Corps of Engineers. But prairie pothole complexes were protected under the Clean Water Rule as the result of extensive scientific research that proved the potholes have a direct connection to navigable waters. That connection will not go away under the new draft, but protection will. (Further reading: A recent article by the Houston Chronicle gets into the nitty-gritty of the region's complicated history with the Clean Water Act.)

Tell Andrew Wheeler to keep prairie pothole wetlands clearly defined and protected by the federal government.

Oklahoma: Pollution in North Carrizo Creek Tributaries
Oklahoma's Cimarron River's headwaters (the smaller streams that combine to form it) are in New Mexico, one of the hardest-hit states under the proposed repeal. That means keeping its downstream tributaries clean and flowing is even more important. One of those is North Carrizo Creek, which runs near Black Mesa Preserve, a protected area for 31 rare species. Although North Carrizo Creek will remain protected, its own tributaries—many ephemeral, meaning they only flow after rainfall, and so small they don't have names of their own—could be filled in for construction purposes, flooded with phosphorus, nitrogen, and manure from farms. Worse yet, they could get contaminated with fracking fluid from the hundreds of oil wells in the region.

Tell the EPA how they can keep the Cimarron River clean.

Arkansas: Bacteria, phosphorous, and nitrates in Buffalo National River Tributaries

The Ozark Mountains support a web of rivers, caves, and underground streams, many of which connect to the Buffalo National River. The waterway supported 1.5 million visitors in 2017 and supported more than 900 jobs. Part of it is on the EPA's list of impaired streams due to high levels of bacteria. Big Creek, one of the river's tributaries, made the same list.

Big Creek is fed by streams that only flow after rainfall, which stand to lose federal protection under the new Clean Water Act. This would make it easier for companies to dump untreated wastewater into pathways that lead to major rivers, even though those rivers are technically protected. Under slimmed-down federal water regulations, more than 60 percent of Arkansas's streams and their adjacent wetlands are at risk of being filled in, paved over, and polluted. (Further reading: The Arkansas Democrat Gazette is monitoring water quality issues in this and other rivers throughout the state.)

Help the EPA support jobs in the Ozarks.

Louisiana: Making regulations in fastlands unclear
While Lousianna's own policies closely regulate the wetlands that touch the Gulf Coast, federal law changes could drastically reduce protections for inland fastlands.

Fastlands are wetlands that were once directly connected to a stream or river but are now cut off by levees. The practice helps with flood control, or can be a means to drain wetlands to make them suitable for development and farming.

Although fastlands are technically isolated wetlands, many are still hydrologically connected to the greater system: Pumps take water from privatized fastlands and flush it back into public, and often protected, waters. The Clean Water Rule states that when a levee separates a wetland or stream from a river, the two bodies of water remain connected, so federal protections still apply. That relationship isn't clear under the proposed changes to the Clean Water Act, so fastland protections will be open to interpretation.

Tell the EPA to make severed waterways count again.

Region 7
EPA Region 7
Includes: Missouri, Iowa, Kansas, and Nebraska.

Missouri: Urbanization, hard-rock mining, and industrial agriculture in the Meramec River Watershed
The first few miles of the Meramec River only flows aboveground after heavy rainfall. It begins as an ephemeral stream in the Ozark Mountains and cuts through forests, bluffs, and glades before flowing through suburbs and mixing into the Mississippi River just south of St. Louis. The dolomite rock that makes up the Ozark region is extremely porous, which means pollutants can easily pass through the stone and into streams. Sometimes that contamination is discharge laced with bacteria from animal waste, or nitrogen from industrial agriculture fields. Other times, it's sewage from failing septic systems and underperforming wastewater facilities, or tainted sediment from lead mines.

Small streams in the Ozark highlands prove critical to downstream health. Even when they run underground, these streams can carry bacteria and chemicals to the larger waterways they feed. The new law would remove protections for Ozark ephemeral streams that contribute to Maramec Spring. This tributary of the Meramec River, which supplies drinking water for nearly 200,000 people in the St. Louis area—it carries nearly 100 million gallons daily—runs deep below the surface. If the federal government loosens regulations for small feeder waterways like Maramec Spring, contaminated drinking water could be the cost.

Tell the EPA to keep your drinking water clean.

Iowa: Keeping Prairie Potholes intact

When glaciers scraped the continent at the end of the last ice age, they dented the Great Plains with millions of shallow divots that still pock modern-day Montana, Minnesota, Wisconsin, Iowa, and the Dakotas. Few are larger than an acre, but they hold repositories of rainwater and snowmelt that prove imperative in an otherwise grassy landscape. The natural potholes are critical breeding and nesting habitat for more than half of our nation's migratory waterfowl, especially ducks. When they dry up, or landowners fill them in, nesting hens compete for resources. A lack of food or space means fewer ducks are born. Like other wetlands, prairie potholes also filter nitrogen runoff from the region's corn, soy, and wheat farms, and hold water so it has time to slowly trickle into groundwater and recharge aquifers that farmers rely on for irrigation. When there aren't wetlands to retain heavy downpours and surface runoff from paved cities, excess liquid floods crops.

The dents play a starring role in the region's hydrology too. According to the United States Geological Survey, the loss of even a small number of prairie potholes can have huge effects. Aerial images in one study showed that watersheds with drained wetlands had almost three times more surface water than those in areas that were rarely depleted. That's not good; excess surface water causes flooding, and its power can overwhelm stream banks and wash sediment in. When sediment builds up on a riverbed, it chokes out life that props up the base of the food chain.

The study also found that a series of small fens are more effective for water storing than single large ones that can more easily overflow. When farmers drain potholes, fewer wetlands must absorb more water. The burden makes them overflow into larger bodies that can't absorb water as fast as their smaller counterparts. That extra water ends up in rivers and streams. When left intact, millions of potholes work together to absorb floodwaters, reducing the blow to downstream watersheds. The impact is clear in places like the Red River. Prairie pothole loss along the watershed has already caused flooding in North Dakota, Minnesota, and Iowa.

We've already lost at least half of the potholes we once had to crops and urban sprawl. Without the Clean Water Rule, it will be easier to degrade what we have left.

Tell the federal government to protect nutrient sinks, flood mitigators, and the Midwest duck factory.

Kansas and Nebraska: Recharging groundwater through prairie playas
More than 80 percent of streams in Kansas are ephemeral or intermittent. This means that not only do the currents stand to lose their Waters of the United States (WOTUS) protections, they also run dry for part of the year, usually evaporating while the growing season is still in full swing. When they can't access surface water, farmers in the region tap into underground storage.

The Ogallala aquifer is crucial to American agriculture. Among the largest on the planet, the colossal reserve sits roughly 200 feet beneath the middle of the country, stretching from South Dakota down to the Texas panhandle. It feeds $35 billion worth of crops every year, including nearly half of Nebraska's farmland. But the Ogallala recharges slowly. Virtually all water that finds its way into the subterranean storage is snowmelt or rainwater that seeped into the region's sandy earth.

That's where playas come in. Think of prairie playas—sometimes called playa lakes—as divots that form in high plains, typically much drier than the regions that support potholes. More than 80,000 of these shallow depressions fill with water in the spring, creating temporary wetlands responsible for as much as 95 percent of all water that refills the basin. Recharge rates in playa basins are as much as 100 times higher than areas without them, but farmers there still siphon water faster than it can be replaced. Drought accelerates depletion even more. The Kansas City Star recently chronicled stories from the farmers who will feel its absence.

Restocking the High Plains' water supply is a huge task, but playas also play many of the same roles as prairie potholes, just in a drier climate; they're critical for stable bird populations, and filter chemicals like nitrogen and phosphorus that are widely used in agriculture but cause problems elsewhere. There's also sediment runoff from tilled grassland, which plugs wetlands and blocks their ability to filter and store surface water. Under the proposed changes to the Clean Water Act, only playas with a significant nexus to other water bodies would warrant federal regulation. Playas are most

threatened by changes to their surrounding environment, so taking them out of consideration when planning for new land uses could help slowly eliminate the ecosystem one project at a time.

Tell the federal government to safeguard aquifers.

Region 8
EPA Region 8
Includes: North Dakota, South Dakota, Montana, Colorado, Wyoming, and Utah.

North Dakota, South Dakota, and Montana: Keeping prairie potholes intact
Eighty-six percent of South Dakota's streams are ephemeral or intermittent, as are 84 percent of North Dakota's. Another one-third of Montana's mountain streams fit the description. All three states are also part of the Prairie Pothole Region, a critical hydrological feature for both industry and wildlife.

When glaciers scraped over the continent at the end of the last ice age, they dented the Great Plains with millions of shallow divots that still pock modern-day Montana, Minnesota, Wisconsin, Iowa, and the Dakotas. Few are larger than an acre, but they hold repositories of rainwater and snowmelt that are imperative in an otherwise grassy landscape. The natural potholes are critical breeding and nesting habitat for more than half of our nation's migratory waterfowl—especially ducks. When they dry up, or landowners fill them in, nesting hens compete for resources. A lack of food or space means fewer ducks are born. Like other wetlands, prairie potholes also filter nitrogen runoff from the region's corn, soy, and wheat farms, and hold water so it has time to slowly trickle into groundwater and recharge aquifers that farmers rely on for irrigation water. When there aren't wetlands to retain heavy downpours and surface runoff from paved cities, excess liquid floods crops.

The dents play a starring role in the region's hydrology, too. According to the United States Geological Survey, the loss of even a small number of prairie potholes can have huge effects. Aerial images in one study showed that watersheds with drained wetlands had almost three times more surface water than those in areas that were rarely depleted. Excess surface water causes flooding, and its power can overwhelm stream banks and wash sediment in. When sediment builds up on a riverbed, it chokes out the life that is the base of the food chain. The study also found that a series of small fens are more effective water storers than a single large one. When farmers drain potholes, fewer wetlands are tasked with absorbing more water. The burden makes them overflow into larger bodies that can't absorb water as fast as their smaller counterparts. That extra water ends up in rivers and streams. When left intact, millions of potholes work together to absorb floodwaters, reducing the blow to downstream watersheds. The impact is clear in places such as the Red River. Prairie-pothole loss along the watershed has already caused flooding in North Dakota, Minnesota, and Iowa.

We've already lost at least half of the potholes we once had to crops and urban sprawl. Without the Clean Water Rule, it will be easier to degrade what we have left.

Tell the federal government to protect nutrient sinks, flood mitigators, and the Midwest duck factory.

Colorado: Protecting the plains from urban sprawl
Colorado is the epicenter for some of the most important water sources in the American west. Snowmelt from the state's massive mountain ranges serves as the headwaters for the Colorado River and the Rio Grande, the third-longest river in the continental United States. Colorado is famous for snowy peaks and deep valleys—but the Great Plains actually cover about half of the state. These eastern flatlands are home to a system of streams that feed the Purgatoire and Arkansas Rivers in the southeast, and the Platte River to the north.

Like Kansas and Nebraska, eastern Colorado also caps the Ogallala aquifer. Among the largest on the planet, this colossal water reserve makes agriculture in dry shortgrass prairies possible. It recharges slowly, and virtually all water that finds its way into the subterranean storage is snowmelt or rainwater that seeped into the region's sandy earth. Spring snowmelt and rain fill shallow grassland depressions, called prairie playas, with water. The wetlands are responsible for 95 percent of all water that refills the basin. Recharge rates in playa basins, such as those in eastern Colorado, are as

much as 100 times higher than areas without them, but farmers are still siphoning water faster than it can be replaced. Drought is accelerating depletion.

Meanwhile urban sprawl threatens to pollute ephemeral tributaries to Colorado's eastern waterways and destroy the wetlands that recharge the Ogallala. In 2017, Colorado's population grew at twice the national average. Sprawl eastward from Denver and Fort Collins already eats into prairie pothole and ephemeral stream territory, so with fewer federal protections in place, more developers can build homes and roads on top of streams that feed larger rivers throughout the water-stressed state.

Colorado is more than mountain streams. Tell the EPA why that's important.

Wyoming and Utah: Loose state regulations in the Green River Basin
The Green River is the largest tributary of the Colorado. In fact, because 2018 was a low-snowpack winter, more water flowed from the Green into its well-known mainstream than from the Colorado River's headwaters in the Rocky Mountains. Despite its significance to the western watershed, the Green River's position—predominantly located in two states with loose protections and robust mining industries—makes it vulnerable to contamination that can kill wildlife and make people sick.

The mighty tributary winds from Wyoming's Wind River Range down through eastern Utah—with a 40-mile pitstop near Dinosaur National Monument—where it meets the Colorado River near Canyonlands National Park. Around one-third of the Upper Green River's tributaries are ephemeral or intermittent, fed by melting snowpack in the spring and early summer, then running dry in the fall. In Wyoming alone, the Upper Green River Basin spans seven southwestern counties: Sweetwater, Uinta, Lincoln, Sublette, Teton, Fremont, and Carbon. Small-stream pollutants in these counties eventually make their way into a critical source that supplies water to 40 million people in seven states.

Wyoming has been loosening discharge regulations since 2017, when the Trump Administration suspended the Clean Water Rule. Among them was a move that that permits five times the amount of E.coli in low-flow streams as was previously legal. These standards were based on new, lowered federal standards. WyoFile reported on another proposal that would allow fossil-fuel developers in the Moneta Divide oil and gas field to dump sodium and sulfate waste into Alkali and Badwater creeks north of Shoshoni. From there, the contaminants would travel 40 miles downstream to the Boysen Reservoir.

Meanwhile, the Deseret News reports that mining on Utah's public lands is on the rise. More than 40 percent of Utah's territory is designated public lands managed by the Bureau of Land Management, and recent policy changes made it easier and cheaper for companies to extract oil from these areas. The state also harbors bertrandite, the raw form of beryllium, a metal used to make cell phones, missiles, and satellites, as well as a huge shale-oil deposit.

Both Wyoming and Utah are only held to the federal government standards under the Clean Water Act. If the suspended rule is permanently reversed, contaminated water from the fossil-fuel industry, both from legal discharges into streams and accidents that dump oil or toxic byproducts into local waterways, would become an even bigger threat.

Tell the EPA to protect public lands and keep contaminants out of your water.

Region 9
Region 9
Includes: California, Hawaii, Arizona, and Nevada

California: Preserving western vernal pools
California's serene beachscapes and mountain-fed springs may make more appearances on desktop wallpapers, but the state owes a lot of its biological diversity—and precious groundwater—to a humbler landscape. The vernal pools that stretch from Baja California to Washington are cyclical wetlands. Shallow divots accumulate water during wet winter months and dry up in the heat of late spring. Like prairie potholes and playas, the 2015 Clean Water Rule specifically protects these temporary wetlands in California's Central Valley, coastal terraces, and mountains. The rule cites the

pools' importance in absorbing flood waters and their consistent, if temporary, connection to the region's waterways. Connections are most apparent when the pools overflow, but also exist through subterranean links.

The fact that vernal pools do not have year-round connections to streams and rivers is exactly what makes them biologically irreplaceable. The fleeting puddles aren't suitable for species that prey on amphibian eggs, so they're a safe place for other animals to breed. They also support semiaquatic plants that would otherwise be overruled. If the pools were totally full or completely dry through all four seasons, plants that favor either of those climates would take over the fauna that thrives in the cyclical ecosystem.

Large farming operations and urban sprawl have decimated nearly 90 percent of western vernal pools in the Central Valley. Even with federal protection, those that remain are threatened by extreme heat and drought brought on by climate change. The potential rule change would affect small pockets of wetlands that add up to millions of acres. Without protection, farmers can expand into these areas, and developers can extend roads or erect suburbs over them. While eliminating the Clean Water Rule could open up critical patches of habitat to destruction, some farmers fear the strict regulations interfere with their operations.

Tell the EPA to keep regulation clear.

Hawaii: Impairing island hydrology

Places like the Makua Valley on the west side of Oahu have networks of streams that appear on maps, but often turn to dry gullies. Heavy rains can fall over Hawaii even in the dry season, and around one-third of what accumulates travels off the islands through rivers. Many of them are what David Henkin, a staff attorney with Earthjustice's Mid-Pacific office, calls flashy streams: They flow with vigor after storms, then disappear. There's very little snowmelt to steadily supply the island's steep watersheds, and storage in underground aquifers is limited. How water acts in Hawaii is based on these unique factors. "Streams that flow seasonally is a mainland concept," Henkin explains. "Island hydrology is different than the mainland's."

The plants and creatures that live on the Hawaiian islands have evolved in sync with a landscape where streams only run for part of the year. Just like salmon in the state of Washington, the life cycle of 'o'opu fish, which are endemic to the islands, requires both clean ocean and flowing freshwater streams. 'O'opu spawn in rivers that wash hatchlings out to sea, where they grow for the first six months of their lives. The species returns to freshwater flows to finish maturing and eventually to lay eggs of their own. Without federal protection, the ephemeral streams that Hawaii's wildlife rely on could be obstructed by roads, homes, or military bases like the one on Makua. This would cut fish like 'o'opu off from their spawning grounds. KITV reports that water-diversion projects have already dried Maui's Kahoma Stream, killing thousands of 'o'opu.

Explain this nuanced ecosystem to Andrew Wheeler.

Arizona and Nevada: Living with water scarcity

The Silver State is the driest, and it also has the fastest-growing population in the nation. Nevadans get 70 percent of their H20 from surface water, making the population extremely susceptible to contamination—both from local sources, including stormwater runoff, and upstream tributaries that carry mining waste and agricultural chemicals and protozoa. In the south, people suck 90 percent of the water they consume from the Colorado River, a strained artery that's currently the star of a multistate conservation plan.

Population growth, drought, and climate change are diminishing surface water in desert states. Ninety-four percent of streams in Arizona are intermittent or ephemeral. Nevada has nearly 90 percent, and they're disappearing. Nevada Public Radio reports that longer bouts of drier, hotter weather are becoming the new normal, leading to reduced snowpack in the Rocky Mountains, the source that feeds most of Nevada's rivers. Because these streams are evaporating for longer periods of time, it's especially important to preserve what we have and keep sediment and chemicals from industries such as mining out of surface water.

These aboveground rivers and streams also play an important role in restocking subterranean reserves called aquifers. Around 40 percent of Arizona's and 30 percent of Nevada's water comes from aquifers—valuable sources that make urban life, industry, and farming possible.

According to Megan Miller, a geophysicist at Arizona State University, surface water in Arizona is often rerouted into recharge basins, essentially porous-bottomed pools of water that slowly drip into aquifers. Sandy Bahr, director of the Sierra Club's Grand Canyon chapter, says that without the Clean Water Rule, urban developers or mining companies such as Hudbay Minerals could cover temporarily dry streambeds without a permit. The severed streams wouldn't make it to natural recharge pools that deposit water into aquifers. Losing federal protections for ephemeral streams would disproportionately affect southwestern states such as Arizona and Nevada, where the temporary waterways are a significant portion of the states' hydrology.

Tell the EPA not to forget the needs of our driest states.

Region 10
EPA Region 10
Includes: Alaska, Washington, Oregon, and Idaho.

Robert Szucs

Alaska, Washington, and Oregon: Protecting salmon habitats
The snowmelt that feeds many of the nation's rivers, especially out west, has historically recharged bodies of water gradually, rather than quickly filling them up as rainfall does. As average spring temperatures get warmer, snow is melting faster and filling rivers over a shorter period of time. That makes water levels more volatile. When levels drop earlier in the season than they used to—or spells of drought dry out streams after the snowmelt is gone—warm air can more efficiently heat them up.

Even small rises in temperature could make rivers lethal for wildlife. If development or diversion cuts off ephemeral and intermittent streams, less water will make it downstream, which will further lower levels. Under the proposed rule changes, these bodies of water won't have protection.

Particularly hot summers in the Columbia and Snake River basins, where salmon both start and end their lives, are already heating rivers to temperatures warm enough to kill the fish before they can reproduce. As Chris Wilke, executive director of Puget Soundkeeper, explains: "As soon as water temperatures get to a point that's comfortable for humans to swim in, that water becomes lethal for salmon." Warmer water speeds up a fish's metabolism, so it needs to eat more to make up for extra calories it burns. Hotter temperatures also make it harder for some of salmon's favorite foods, like some small crustaceans and plankton, to reproduce, so there's less grub to go around. Salmon populations in the Salish Sea off the coast of Washington have sharply declined since the 1980s.

In Alaska, industry poses the biggest threat to salmon. Wetlands cover more than one-third of the state's territory—which accounts for more than 60 percent of all wetlands in the country. Proposed copper and gold mines in areas like Bristol Bay would dig up swaths of these flooded grasslands that flow into salmon waters. According to an EPA assessment of mining potential in the area, Bristol Bay supports the largest sockeye salmon fishery in the world; this pocket of the Bering Sea produces almost $480 million in revenue and jobs for 14,000 people. The EPA also found that the region contains relatively small traces of copper, so "mining will be economic only if conducted over large areas and will necessarily produce large amounts of waste material." Loosened federal regulations will create fewer barriers for industries to set up shop in these hydrologically significant areas.

The Clean Water Rule protects the salmon industry. Tell the EPA all about it.

Idaho: Keeping the Little Lost off the impaired waters list
Idaho added the Little Lost River to its list of impaired waters in 1998. At the time, agriculture had diverted so much of its flow to irrigate prairie for cattle grazing that water temperatures rose and threatened the river's fish. The Bureau of

Land Management worked with conservation groups to mitigate the damage, and to prevent the river from future heating and contamination. They planted thousands of shrubs that shaded the baking water and locked down sediment that ran in from its streambanks. Their efforts helped, but the sediment remains a problem.

Under the new federal regulations, this could get worse. The Little Lost doesn't connect above the surface with any downstream waterways. It carves through eastern Idaho's volcanic landscape, where massive lava formations prevent it from meeting downstream waters like the Snake River at the surface. Instead, the Little Lost dips beneath the porous earth near Howe. Because of the break in overland flow, this stretch of the tributary could lose federal protection under the proposed rule change.

The river isn't just a resource for the cattle industry. It also harbors rainbow and bull trout that cannot survive without cool water. As climate change melts snow earlier in the season, water levels in rivers like the Little Lost run lower earlier, too. If industry diverts more water—or, if sediment chokes it—temperatures in downstream flows like the Snake River will no longer be able to support cold-water species of trout and salmon.

Tell the EPA that volcanic rock lures rivers underground.

The Washington Post
Local Opinion: Water is precious. Virginia shouldn't be alone in protecting it
https://www.washingtonpost.com/opinions/local-opinions/water-is-precious-virginia-shouldnt-be-alone-in-protecting-it/2019/04/11/702e6dc4-50d5-11e9-88a1-ed346f0ec94f_story.html?utm_term=.0482a34c892f
Robert Whitescarver
Friday, April 12, 2019

Robert Whitescarver is a farmer and watershed restoration consultant and teaches natural resource management at James Madison University.

My wife, Jeanne, and I run a farm in the legendary Shenandoah Valley that has been in her family since 1746. She's a ninth-generation farmer here in Swoope, Va. Together with Jeanne's mother, we raise cows to produce calves for sale. I am also retired from the Agriculture Department's Natural Resources Conservation Service with 31 years of field experience.

We know a thing or two about agriculture. And we depend on abundant clean water for our livelihood. That's exactly why we have grave concerns about the proposed "waters of the United States" (WOTUS) rule that is open for public comment until April 15.

For decades, I worked with farmers to help them improve water quality in the streams and wetlands on their farms by fencing livestock out of streams, installing alternate water supplies for livestock and planting trees and shrubs as streamside buffers. These measures reduce the erosion of land, sedimentation of streams and nutrient and pathogen pollution. Keeping cows out of streams and wetlands also reduces calf mortality. Livestock can't thrive on polluted, pathogen-laden water.

When Congress passed the Clean Water Act in 1972, it gave the Environmental Protection Agency and the Army Corps of Engineers the daunting task of determining what streams, rivers, lakes, seeps, springs and wetlands should be protected by federal law.

How far upstream should we have federal protection of our waters for those downstream? We have been redefining this point since 1972. Judicial interpretations and federal agency rulemakings have made the definition an ever-changing target. Some opposed the Obama administration's 2015 definition. The Trump administration is attempting to redefine that point again to eliminate protections for many wetlands and intermittent streams.

I read the 67-page proposal, and I don't think it's any clearer than the 2015 rule. What is clear is that the EPA and the corps would regulate and protect a lot less water than they do now, burdening states with more responsibility and threatening the success of major water-quality improvement programs such as the Chesapeake Clean Water Blueprint.

The proposed rule provides protection for navigable waters, certain tributaries of those navigable waters and wetlands adjacent to those waters. Tributaries that in a "typical year" have surface-water flow to those waters are protected in the proposal. The rule offers a very complicated method for defining a typical year. And even worse, the EPA is considering eliminating protections for intermittent streams.

The bottom line is that, in effect, most wetlands would no longer be protected. The "adjacent" requirement for wetlands means they must abut or connect by surface water to navigable waters or their tributaries. If only groundwater connects them, or the connection does not meet the typical-year requirement, there will be no Clean Water Act protection.

Disturbingly, the proposed rule states that "tributaries as defined in this proposal do not include surface features that flow only in direct response to precipitation." This means that all ephemeral streams will be unprotected — even if they follow a defined channel.

I shake my head in disbelief.

Precipitation directly charges all freshwater streams, rivers, springs, seeps, groundwater and wetlands. We must understand that all water is connected, whether it is on the surface, in the ground, in the air as water vapor or clouds, or in the vascular system of a tree — it's all part of the hydrologic cycle.

The proposed rule will leave many streams and wetlands open to pollution or destruction.

I believe, at a minimum, all channels that were naturally formed by the forces of flowing water, whether they have water in them or not, should be protected under the Clean Water Act.

The proposed WOTUS rule would profoundly limit current protections and enable polluters to pollute more streams and developers to destroy more wetlands.

For something as precious as water, more regulation is better than less. States are supposed to have regulatory powers over what the feds don't. But I'm not confident states are up to the challenge. For example, in Virginia the builders of the Mountain Valley Pipeline have been cited for more than 300 water quality violations of state law, and yet the pipeline is still under construction.

We have seen the benefits of clean water on our own farm. Middle River, a tributary of the South Fork of the Shenandoah, flows for a half-mile through the farm. Two ephemeral tributaries flow into the river from our pastures. We have fenced our cattle out of the river and both tributaries. We sample the river for E. coli where it enters our farm and where it leaves and see on average a 55 percent reduction in just a half-mile. This is attributable to keeping our cattle out of the river and maintaining a forested riparian buffer, which allows the river's ecosystem to clean itself.

Water is precious. We need to protect it.

Anthony D'Andrea
Intern, Office of Public Affairs
202-564-7137